TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]107

CUDAHY PACKING COMPANY OF NEBRASKA, PLAINTIFF IN ERROR,

vs.

MARY ANN PARRAMORE, AS WIDOW AND GUARDIAN, ETC., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

(29,097)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 547.

CUDAHY PACKING COMPANY OF NEBRASKA, PLAINTIFF IN ERROR,

vs.

MARY ANN PARRAMORE, AS WIDOW AND GUARDIAN, ETC., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

INDEX.

	Original.	Print
Proceedings in the supreme court of Utah	2	1
Petition for writ of review	2	1
Exhibit A—Decision and order of Industrial Commission of Utah in claim No. 547	12	9
Writ of review	15	12
Certificate of secretary of Industrial Commission to transcript	17	14
Testimony of Mrs. Mary Ann Parramore	20	16
John Reynolds	25	20
Clarence L. Garner	40	34
Rees Thomas	41	35
Fred W. Hoffman	44	37
William Westerman	53	46
Reporter's certificate	55	47
Order denying petition for rehearing	56	48
Petition for rehearing and modification of decree	57	48
Decision and order of Industrial Commission	66	53
Petition to include minors in application 547	72	57

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	Original.	Print.
Exhibit A—Letters of guardianship of Mary Ann Parramore	74	58
Exhibit B—Order of district court of Salt Lake County authorizing guardian to prosecute for minors	76	60
Statement showing number of trains passing plant daily	79	62
Application for compensation	80	63
Original report of accident	81½	65
Demurrer to petition for writ of review	82	66
Amendments to petition for writ of review	83	66
Minute entry of argument and submission	86	68
Order granting leave to amend petition	86	68
Decree	86	69
Opinion, Gideon, J	88	70
Petition for rehearing and brief	94	78
Order denying petition	117	81
Memorandum opinion on petition for rehearing, Gideon, J	118	81
Order *re* record from Industrial Commission	119	82
Petition for writ of error	120	83
Order allowing writ and fixing bond	125	86
Writ of error	127	87
Assignment of errors	130	88
Bond on writ of error	134	90
Citation and service	137	92
Præcipe for transcript	140	93
Docket entries	144	95
Clerk's certificate	145	96
Statement of points relied upon	146	97
Stipulation as to parts of record to be printed and service	147	98

1 & 2 Filed Feb. 10, 1922. H. W. Griffith, Clerk Supreme Court, Utah.

In the Supreme Court of the State of Utah.

No. 3778.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation, Plaintiff and Petitioner,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Childre[illegible] of Joseph Parramore, Deceased, and the Industrial Commission of Utah, Defendants.

Petition for Writ of Review.

To the Honorable the Supreme Court of the State of Utah and the Justices Thereof:

Your petitioner respectfully represents:

I.

That your petitioner, Cudahy Packing Co. of Nebraska, is, and at all times hereinafter stated, was a corporation duly organized and existing under and by virtue of the laws of the State of
3 Nebraska with its principal place of business at Omaha, Nebraska, but having, owning, and maintaining headquarters and a place of business at North Salt Lake, Davis County, Utah, having complied with the laws of the State of Utah in relation to a non-resident corporation doing business therein; and is and at all times hereinafter stated was of the class denominated as an employer under the provisions of Chapter 100 of the laws of Utah, 1917, and amendments thereto, relating to the Industrial Commission and workmen's compensation; and at all of said times was and now is what is known and designated as a self-insurer, paying compensation direct to its employees, having complied with all the rules and regulations of the Industrial Commission of Utah relating thereto.

II.

That said defendant, the Industrial Commission of Utah is a corporation created and existing under and by virtue of the provisions of said Chapter 100 of the laws of Utah, 1917, and amendments thereto.

III.

That said defendant, Mary Ann Parramore is the widow of one Joseph Parramore, deceased, and on or about the 16th day of December, 1921, the said Mary Ann Parramore was duly appointed guardian of the persons and estates of Ruth Parramore, age 20 years, Owen Parramore, age 17 years, and Luella Parramore, age 15 years, minor children of the said deceased, by the District Court of Salt Lake County, Utah.

IV.

That on or about the 25th day of October, 1921, the said
4 Mary Ann Parramore, as the widow of said deceased, and as a dependent, filed an application for compensation with the said Industrial Commission, under the provisoins of the aforesaid laws and in conformity with the rules and regulations of the said Industrial Commission, on account of the death of her husband, the said Joseph Parramore, deceased, who was killed by reason of an accident, on or about the 9th day of August, 1921, at North Salt Lake, Utah, claiming therein that the said deceased was killed by reason of an accident arising out of or in the course of his employment with said plaintiff, Cudahy Packing Co. of Nebraska, and claiming compensation as a dependent person; and that subsequently, the said Mary Ann Parramore was appointed guardian of said minors, and joined in the said application on behalf of the said minors as dependent persons of the said deceased; and the said Industrial Commission assumed jurisdiction of the said application for compensation (said matter before the said Industrial Commission being known as Claim No. 547 of the files and records of the said Commission) and such proceedings were had in said matter that a hearing was had before the said Commission at Salt Lake City, Utah, on or about the 18th day of November, 1921, at 10 o'clock A. M., and evidence was had and taken and reported on the part of the applicants as well as on the part of the defendant. The matter was submitted and by the Industrial Commission considered and subsequently and on or about the 17th day of December, 1921, the said Industrial Commission made and entered and gave its de-
5 cision in said matter, holding, in effect, that the said deceased was killed by an accident arising out of or in the course of his employment, at a point approximately six miles from Salt Lake City, and near the plant of the Cudahy Packing Company, and awarding to the said applicants, who are the individual defendants named herein, compensation in the sum of $16.00 per week beginning on the 9th day of August, 1921, for not to exceed a period of 312 weeks, the maximum compensation allowable, for the benefit of said individual applicants; and providing for certain expenses all of which fully appears by the said decision, a copy of which is hereto attached and made part hereof, and marked Exhibit "A";

That subsequently, and within the time allowed by law, and in accordance with the practice in such matters, the said Cudah

Packing Company of Nebraska, on or about January 7th, 1922, filed with the said Commission, its petition for rehearing and modification, which the said Commission considered; and on or about the 17th day of January, 1922, denied the said petition for rehearing.

V.

Petitioner further represents that it makes this petition for the purpose of procuring a writ of review to be issued out of this court to the said Industrial Commission of Utah, and the said individual defendants above named, for the purpose of having the lawfulness of the said award and decision of the Industrial Commission inquired into and determined; and for the purpose of having the said Commission certify its record, which shall include all the proceedings and evidence taken in said matter, together with all things touching the same, as fully and entirely as the same remains before the said Commission, to this Court, that the same may be reviewed by this Court; and that this Court may cause to be done thereupon, what it may appear of right ought to be done.

VI.

Your petitioner further represents that in making its award and decision aforesaid, that the said Industrial Commission acted without power, and in excess of its powers, and in excess of its jurisdiction, and the said decision and award is unlawful in this: That the said Joseph Parramore was not killed by reason of an accident arising out of or in the course of his employment with the said Cudahy Packing Company, as will fully appear by the undisputed
6 evidence which was taken and reported before the Industrial Commission, of the facts and circumstances in connection with the death of the said deceased; and that the said Industrial Commission was not warranted under the evidence, and by reason of the facts, in making an award or decision or finding that the said deceased met with an accident arising out of or in the course of his employment with the said Cudahy Packing Co.

VII.

And your petitioner further represents, as was fully set out in the said petition for rehearing on the part — the plaintiff before the Commission, and as shown by the evidence, transcript and record before the said Industrial Commission in said matter, as follows:

(*a*) That the said deceased was not killed or injured by reason of an accident arising out of or in the course of his employment by the said company.

(*b*) That at the time and place of the injuries and accident to the said deceased, the deceased was not upon the premises of the employer.

(*c*) That at the time and place of the death and injuries to the said deceased, he was not engaged in any work or performing any duties for or on behalf or in the interest of the said Cudahy Packing Co.

(*d*) That at the time and place of the said injuries and death of the deceased, he was not working or doing anything whatsoever in line with his employment.

(*e*) That at the time of the death of said deceased and his injuries, the deceased had not been engaged in any work or labor for the employer since the previous day.

(*f*) That at the time and place of said injuries and death of the deceased, he had not even been upon the premises of the employer for more than fifteen hours, and on the previous day.

(*g*) That the said deceased had not reached the place of his employment or even the premises of the said company at the time he received his injuries and died.

(*h*) That at the time said deceased met with his injuries and died, he not only had not reached the premises of his employer but the time for the commencement of his employment had not yet arrived.

7 (*i*) That the said deseased met with an accident which resulted in his death while he was a member of the general public and not upon the premises of the employer, nor doing any work for the employer, nor performing any labor in line with his employment, and before the time of his employment had arrived, and while he was at a place over, upon, or concerning which, the said employer had no jurisdiction, authority or control, either as to the person of the deceased or as to the place where the deceased met with his injuries which resulted in his death.

(*j*) That the said deceased was killed by reason of an accident while a member of the public upon a generally traveled and public road.

(*k*) That the deceased was killed upon a public railroad crossing, and upon the right-of-way of a railroad by being run down or in collision with an engine of a railroad company which was not engaged in, or performing any work for or an behalf of the said employer.

(*l*) That the said deceased went to work for the plaintiff by his own method of transportation and did not, prior to the accident which resulted in his death, reach the premises of the said plaintiff the employer, by any means of transportation provided or recommended by the employer; but chose his own means of getting to his place of work and at his own time, and was injured while going to work but before he reached the place of his employment or even the premises of his employer by conveyance of his own convenience and at his own selection, over or concerning which, the plaintiff

had no control, authority or jurisdiction, nor had made any recommendations thereto in any manner.

(*m*) That the deceased resided a distance of six or seven miles from the plant of the plaintiff which was the place of the deceased's previous employment, and that in going from his place of residence to his place of employment, he chose his own time and own manner or method of conveyance; and from the place of his residence to the plant of the plaintiff company within said distance of six or seven miles, the deceased was exposed to many dangers, risks and hazards upon the public thoroughfares and streets of Salt Lake City and of Davis County, Utah as any member of the public is so exposed in traveling along said streets and thoroughfares from many
8 railroad crossings, interurban crossings and street-car crossings or from collisions with vehicles upon said streets and thoroughfares over or upon, or concerning which, the said employer had and has no supervision, jurisdiction or control, and concerning or in relation to which, the said defendant can have no authority, jurisdiction or control.

(*n*) That the said plaintiff has no right or authority to establish or maintain any safety signals or safety appliances over and along the streets of Salt Lake City and the thoroughfares and public roads of Davis County, over and along which the said deceased was compelled to travel in leaving his place of residence in Salt Lake City to arrive at the place of his work in the plant of the plaintiff at North Salt Lake, Utah.

(*o*) That there is and was no duty on the part of the said plaintiff to make the streets of Salt Lake City, the public thoroughfares of Davis County and the public roads and public railroad crossings over and along which the said deceased was compelled to travel or go in reaching his place of work from the place of his residence, safe.

(*p*) That there is and was no duty on the part of the plaintiff to protect said deceased from accidents or injuries after he quit one day's work and before he came to work on the following day from causes over which the plaintiff had no control and while the deceased or any other employee was not engaged in any service whatsoever in line with his employment.

(*q*) That the said defendant was not an insurer of the safety of the said deceased from the time he left his home in Salt Lake City until he arrived at the packing plant of the plaintiff in North Salt Lake, Utah, a distance of six or seven miles and while the deceased was a member of the general public performing no work or labor for or in the interest of the plaintiff, nor in the course of his employment.

(*r*) That the employment of the deceased with the plaintiff was that of stationary engineer in charge of the engine room and engine within the packing plant of the plaintiff at North Salt Lake, Utah, and his employment had to do or concerned nothing else; and that

an accident which resulted in the death of the deceased while a member of the public upon a public thoroughfare and at a public railroad crossing before the premises of the employer were
9 reached, does not arise out of or does it occur in the course of the deceased's employment; that the accident which resulted in the death of the deceased, in no mannr, directly or indirectly, had anything to do whatsoever with the employment of the deceased with the plaintiff.

(*s*) That the industry and business of the plaintiff was not in any manner concerned or effected by anything which the deceased was doing at the time he received the injuries which resulted in his death. In other words,—so far as this plaintiff is concerned, the death of the deceased was not an industrial accident,—and there is no fact or circumstance in connection with he accident which resulted in the death of the deceased which can be chargeable in any manner to the business or industry of the plaintiff or the work or employment of the deceased with the plaintiff.

(*t*) That the said deceased was not employed by the plaintiff until he at least should reach the premises of the plaintiff to report for work; that the deceased's employment with the defendant could not commence until the premises of the defendant were reached, and the deceased was killed on a public highway and at a public railway crossing on the main right-of-way of a railroad, under facts and circumstances in which the defendant was not concerned, and before the deceased reached the plaintiff's premises, and before the time of his employment should commence, at a place more than 100 feet distant from the gate leading into the employer's inclosure containing its packing plant, and which gate was more than 70 feet distant from the employer's packing plant, and the place of the deceased's employment being within the packing plant as stationary engineer; that the employment of the deceased by the plaintiff was not continuous during the whole twenty-four hours of a day but was shift employment to commence at a certain time on one day and to continue until a certain time and while the deceased was within the packing plant of the plaintiff; that nothing could occur to the deceased in the course of his employment unless it was within the time of his work, that is from the time his work commenced on a day until the time his work ceased for that day; that the deceased was killed before his work for that day commenced and before he had arrived at the place of his employment or before he had reached even the real estate premises of the employer.

10 (*u*) Under the facts and circumstances of the deceased's accident and death, the employment of the deceased by the plaintiff as stationary engineer, had nothing to do whatsoever with the accident or death because the employment had not commenced and the place of work had not been reached, and the time of the employment had not yet arrived. And there was nothing absolutely in connection with the accident or death of the deceased which arose out of or in the course of his employment.

(*v*) That there was no causal connection or relationship between the accident and the manner of it resulting in the death of the deceased and the employment, work, or duties of the deceased, or contemplated by the employment of the deceased; and that the accident and death of the deceased and the employment are separate and apart and without relationship, cause or effect.

(*w*) The finding of the Honorable Commission "that the plant of the Cudahy Packing Co. is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant" is a finding by the Commission upon which there is no evidence in the record nor was any given or taken at the hearing in said matter; that there is no evidence that the public crossing on a public county road of the main line of the Denver & Rio Grande Railroad where the accident to the deceased occurred, and where he died, was or could be, by any logical deduction, connected in any manner with the place of the location of the plant of the Cudahy Packing Co. within which the deceased had been an employee as a stationary engineer. The plaintiff particularly calls attention of the Court to the fact that if the Cudahy Packing Company is dependent upon shipping facilities furnished by railroads, it does not and cannot appear that a public crossing on a public highway of the main line of a railroad has anything to do directly or indirectly with the fact that it may be convenient for the Cudahy Packing Company to have convenient railroad facilities. The Cudahy Packing Company did not use the main line of the Denver & Rio Grande Railroad at the place of the public crossing,—of the public road,—of the public highway. Any railroad facilities or switches which may have been used or found convenient for the packing plant or business of the plaintiff, in no wise, has relation to a public crossing of the main line of the railroad company. The accident did not happen upon any
11 switch or upon any railroad crossing provided for the business or convenience of the Cudahy Packing Company. If the accident had happened upon a switch which furnished the Cudahy company railroad facilities and where the Cudahy company was exercising or using those facilities, and on the premises of the company, an altogether different set of facts would exist; but the place of the accident had no more to do with the Cudahy plant or the railroad facilities of the plant than if the deceased had been hit by a motorcycle in front of his own dooryard seven miles distant from the plant, and an hour before the time of the deceased's work commenced if he had chosen to walk to work instead of using some conveyance.

(*x*) It is not contemplated by the Workmen's Compensation Act that an employer shall pay compensation to employees when they are off work and members of the general public, when the employers have no authority, power or control or jurisdiction over what they are doing or where they may be and when the employee is not upon the premises of the employer nor doing anything in line with his employment; and in the instant case, the accident and death of the

deceased was not from any industrial accident with which the Cudahy Packing Co. was concerned, and the accident to the deceased did not arise out of nor occur in the course of anything whatsoever in line with or connected with or growing out of any employment or work, labor or duties of the deceased in the interest or on behalf of the plaintiff.

Wherefore, your petitioner therefore prays that a writ of review or certiorari may be issued by this court directed to the said Industrial Commission of Utah requiring it to certify to the Supreme Court its record, which shall include all the proceedings and evidence taken in said matter before it entitled Mary Ann Parramore, as widow, and as guardian, etc., Applicants, vs. Cudahy Packing Co. of Nebraska, claim No. 547, and all proceeding leading up to and including the said decision and award and subsequent proceedings thereto; and that the said Commission be directed to return the same to this Court, according to the command of the writ, and at the same time, that the said individual defendants above named, show cause before this court why the said decision and award should not be set aside and reversed; and that thereupon, the Supreme Court review and annul the said decision and award; and that, in the meantime, execution of said decision and award be stayed.

CUDAHY PACKING CO. OF NEBRASKA,
By FRED W. HOFFMAN,
Utah Manager, Petitioner and Plaintiff.
BOOTH, LEE, BADGER & RICH,
Attorneys for Plaintiff.

12 STATE OF UTAH,
County of Salt Lake, ss:

Fred W. Hoffman, being first duly sworn on oath, deposes and says that he is an agent of the above named Cudahy Packing Co. of Nebraska, to-wit, its resident Utah manager, and as such, he makes this verification for and on behalf of the said plaintiff; that he has read the foregoing petition, knows and understands the contents thereof and the facts therein stated are true of his own knowledge, except as to those matters stated upon information and belief, and as to such matters, he believes the same to be true.

FRED W. HOFFMAN.

Subscribed and sworn to before me, this 8th day of February, 1922.

[SEAL.] MARY H. HUNTER,
Notary Public.

604-10 Boston Bldg., Salt Lake City, Utah.

EXHIBIT "A."

(Title of Commission and Cause.)

Claim No. 547.

Decision.

Mary Ann Parramore, on the twenty-fifth day of October, 1921, made application to the Commission for compensation for the death of her husband, Joseph Parramore, alleging that on the ninth day of August, 1921, her husband was fatally injured by reason of an accident arising out of or in the course of his employment, while employed by the Cudahy Packing Co. of Nebraska, alleging that on said date Mr. Parramore, while riding in an automobile with two other employees were crossing the Denver & Rio Grande Western Railroad tracks at the plant, was struck by a Denver & Rio Grande Western Railroad engine and was instantly killed. The applicant alleges that on said date she was the lawful wife, and that Owen Parramore, age 20, Ruth Parramore, age 17, and Luella Parramore, age 15, were the minor children, of Joseph Parramore, and were living with him and dependent upon him for their maintenance and support.

Pursuant to notice and order of The Industrial Commission of Utah, this cause came on regularly to be heard on the eighteenth day of November, 1921, at the State Capitol, Salt Lake City, Utah. The applicant was present in person and was represented by Judge F. C. Loofbourow; the defendant being represented by Booth, Lee, Badger & Rich, attorneys, Mr. Benjamin L. Rich present.

Findings.

In accordance with the stipulations entered into, and the evidence submitted, the Commission finds the following to be the facts:

13 I.

That Joseph Parramore, on the ninth day of August, 1921, was fatally injured by accident at or near their plant located about six miles north of Salt Lake City, Utah, while employed by the Cudahy Packing Co. of Nebraska; that on said date the Cudahy Packing Company had in their employ in the State of Utah three or more workmen; that the Cudahy Packing Co. of Nebraska is known and designated as a self-insurer, paying compensation direct to its injured employees or their dependents; that on said date three workmen, including Mr. Parramore, all of whom lived in Salt Lake City, were traveling in an automobile owned by one of the workmen, approaching the plant where they were employed; that while crossing the main line tracks of the Denver & Rio Grande Western

Railroad Company, which tracks were alongside the land upon which is located the plant of the Cudahy Packing Company, the automobile in which they were riding was struck by an engine of the railroad company and Joseph Parramore thrown against a post in the right of way fence, which fence also enclosed the property of the Cudahy Packing Company and was instantly killed; that within half a mile of the plant of the Cudahy Packing Company, where Mr. Parramore was employed, it was necessary that Mr. Parramore pass over the main line tracks of the Bamberger Electric Railway Company and the main line tracks of the Oregon Short Line Railroad Company, and the main line tracks of the Denver & Rio Grande Western Railroad Company, and three side tracks and transfer tracks between these various lines of railroad; that the Cudahy Packing Company furnished its employees no method of travel or conveyance in coming to or leaving the plant and most of the employees of the company lived in such localities that it was necessary that they should travel, to and from their work, the road which crossed the railroad tracks above mentioned; that the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant; that the death of Mr. Parramore occurred about seven minutes before the time at which he was to commence work; that the Cudahy Packing Company does not furnish at its plant either board or lodging; that there are no public conveyances that could carry employees directly to the plant; that employees who went to
14 their work by street cars or by the Bamberger Electric Railway must cross the railroad tracks above mentioned, either on foot or by private conveyance; that Mr. Parramore at the time he was killed was using the most direct and practicable route to the plant of the Cudahy Packing Company and the one ordinarily traveled by the majority of the employees, and by all the employees residing in Salt Lake City.

II.

That the applicant was duly appointed guardian of the estate and person of Owen Parramore, Ruth Parramore and Luella Parramoree, minor children of the decedent, in the District Court of the State of Utah, in and for Salt Lake County, on the sixteenth day of December, 1921; that on said date the said Court made an order authorizing the applicant as guardian to take such action as is necessary to join said minors in the application of Mary Ann Parramore individually for compensation; also that the said District Court made and entered an order authorizing the applicant, as guardian of said minors, to assign to the Cudahy Packing Co. of Nebraska, a corporation, all claim that the said minors have against the Denver & Rio Grande Western Railroad Company for damages for causing the death of Joseph Parramore, father of said minors; that a certified copy of said orders are filed with The Industrial Commission of Utah and made part of the record in this case; that the applicant

as such guardian asks that said Owen Parramore, Ruth Parramore and Luella Parramore be joined in this application for compensation and that they be allowed to participate in whatever order is made in this matter.

III.

That on the ninth day of August, 1921, Mary Ann Parramore, was the lawful wife, and Owen Parramore, age 20, Ruth Parramore, age 17, and Luella Parramore, age 15, were the minor children, of Joseph Parramore, and were living with him and wholly dependent upon him for their maintenance and support.

IV.

That on August 9, 1921, Joseph Parramore was paid a wage of $35.00 per week, working seven days per week.

V.

That no compensation has been paid to any person or persons.

VI.

That Judge F. C. Loofbourow was the attorney representing the applicant and appeared before the Commission at the hearing in her behalf.

14½ Conclusions.

In view of the foregoing findings the Commission concludes that Joseph Parramore, on the ninth day of August, 1921, was killed by accident arising out of or in the course of his employment at a point approximately six miles from Salt Lake City and near the plant of the Cudahy Packing Co. of Nebraska, an employer subject to the pprovisions of the Workmen's Compensation Act; that Mary Ann Parramore was the lawful wife, and Owen Parramore, Ruth Parramore and Luella Parramore the minor children, of the said Joseph Parramore, and were living with him and wholly dependent upon him for their support and maintenance on said date, therefore the Cudahy Packing Co. of Nebraska should pay to Mary Ann Parramore, as widow, and as guardian of the above named minor children, compensation in the sum of Sixteen Dollars per week, beginning on the ninth day of August, 1921, for not to exceed a period of three hundred twelve weeks, for the sole benefit of herself and minor children, all accrued payments to date to be paid in a lump sum; also to pay funeral expense incurred by reason of the burial of decedent according to law; that a reasonable attorney's fee should be paid to attorney F. C. Loofbourow by the Cudahy Packing Co. of Nebraska and deducted from the compensation awarded to the applicant, in the sum of One Hundred Thirty Five Dollars.

Wherefore, it is ordered that compensation be, and the same is hereby awarded to be paid by the Cudahy Packing Co. of Nebraska to Mary Ann Parramore, as the widow of the deceased, and as guardian of Owen Parramore, Ruth Parramore and Luella Parramore, the minor children of Joseph Parramore, in the sum of Sixteen Dollars per week, beginning August 9, 1921, not to exceed a period of three hundred twelve weeks, all accrued payments to date to be paid in a lump sum; also to pay reasonable funeral expense according to law.

It is further ordered that the Cudahy Packing Co. of Nebraska pay to F. C. Loofbourow, attorney, the sum of $135.00 as attorney's fee, said amount to be deducted from the compensation awarded the applicant.

THE INDUSTRIAL COMMISSION
OF UTAH.
WM. M. KNERR,
O. F. McSHANE,
P. A. THATCHER,
Commissioners.

Decision rendered December 17th, 1921.

15 In the Supreme Court of the State of Utah.

Case No. 3778.

CUDAHY PACKING COMPANY OF NEBRASKA, Plaintiff,

v.

MARY ANN PARRAMORE, as Widow and as Guardian, etc., and INDUSTRIAL COMMISSION OF UTAH, Defendants.

Writ of Review.

The People of the State of Utah to the Industrial Commission of Utah and Mary Ann Parramore, as widow and as guardian of the persons and estates of Owen Parramore, Ruth Parramore, and Luella Parramore, minor children of Joseph Parramore, deceased:

Whereas, it appears to us by the petition of the Cudahy Packing Co. of Nebraska, a party beneficially interested in that certain case now pending before said Commission wherein Mary Ann Parramore, as widow, and as guardian of the persons and estates of Owen Parramore, Ruth Parramore, and Luella Parramore, minor children of Joseph Parramore, deceased, are applicants and the said Cudahy Packing Co. of Nebraska, is defendant in claim No. 547 of the records and files of said Commission; and being upon an application for compensation on the part of said applicants under provisions of Chapter 100, Compiled Laws of Utah, 1917, as amended; that the said Industrial Commission of Utah, exercising judicial functions and acting without power, or in excess of the jurisdiction or powers,

has made a decision and award of compensation which is against law, and which is not supported by the evidence and record and facts in said matter, and that there is no appeal or remedy of any other kind or character than by proceedings under this writ; that the said defendants, being therefore willing to be certified of the said matter or proceeding;

16 We therefore command and direct the said Industrial Commission of Utah, that it certify and send to our Supreme Court, at the courtroom thereof in the State Capitol of the State of Utah, at Salt Lake City, Utah, on the 4th day of March, A. D. 1922, at the hour of 10 o'clock A. M., annexed to this writ, a transcript of the record and proceedings in said cause, matter, action or claim aforesaid, with all things touching the same, as fully and entirely as the same remains before the said Industrial Commission, including all the proceedings and evidence taken in the mattter, and by whatever names the parties may be called therein, that the same may be reviewed by our Supreme Court and that our Supreme Court may further cause to be done, thereupon, what it may appear of right ought to be done; and in the meantime, we command and require that the said Industrial Commission of Utah desist from further proceedings in the matter so to be reviewed, and that execution be stayed in said cause;

And we also command and direct that the said Mary Ann Parramore, as the widow, and as the guardian of said minor children of the said Joseph Parramore, deceased, appear and show cause before our Supreme Court, at the said time and place, why the said award and decision of the said Industrial Commission should not be set aside and reversed in accordance with the prayer of the said petition of the said Cudahy Packing Co. of Nebraska; and that our Supreme Court cause to be done thereupon, what it may appear of right ought to be done;

And it is further ordered that a copy of said petition and a copy of this writ be forthwith served upon the said the Industrial Commission of Utah, and the said Mary Ann Parramore, as widow, and as guardian of the said minor children of the said deceased.

Witness the Justices of our Supreme Court, at Salt Lake City, Utah, this 10th day of February, A. D. 1922.

[SEAL.] H. W. GRIFFITH,
Clerk.

Service of copy of the foregoing writ and of the petition of the above named plaintiff, admitted this 10th day of February, 1922.

INDUSTRIAL COMMISSION OF UTAH,
By P. A. THATCHER.
FREDERICK C. LOOFBOUROW,
Attorney for said Individual Defendants.

Endorsed: Filed February 10, 1922. H. W. Griffith, Clerk.

17 Before the Industrial Commission of Utah.

Claim #547.

MARY ANN PARRAMORE

vs.

CUDAHY PACKING CO. OF NEBRASKA.

Certificate.

Claim #547.

I hereby certify that I am the duly appointed, qualified and acting Secretary of The Industrial Commission of Utah, that as such Secretary I hereby certify that the following documents numbered 1 to 12, inclusive, and designated as:

(1) First Report of Injury.

(2) Application for Adjustment of Claim.

(3) Statement of number of trains crossing roadway.

(4) Order—Exhibit "B."

(5) Letters of Guardianship—Exhibit "A."

(6) Petition of Mary Ann Parramore.

(7) Decision of Commission.

(8) Petition for He-hearing and Modification of Decree.

(9) Commission's Motion denying Re-hearing.

(10) Transcript of Testimony.

(11) Petition for Writ of Review.

(12) Writ of Review.

contain a full, true and correct record of the above entitled case as the same appears on file in the office of The Industrial Commission of Utah, the same being all the proceedings and all the evidence in the case.

[SEAL.]

CAROLYN I. SMITH,
Secretary of the Industrial Commission of Utah.

Filed Feb. 23, 1922.

H. W. GRIFFITH,
Clerk Supreme Court of Utah.

18 Before the Industrial Commission of Utah.

Claim No. 547.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore (Age 20), Ruth Parramore (Age 17), and Luella Parramore (15), Minor Children of Joseph Parramore, Deceased, Applicant,

VS.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation, Defendant.

Report of Hearing, Transcript, etc.

B. P. Spry, Reporter,

324 State Capitol,

Salt Lake City, Utah.

19 Before the Industrial Commission of Utah.

Claim No. 547.

MARY ANN PARRAMORE et al., Applicants,

VS.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation, Defendant.

Report of Hearing.

Pursuant to notice and order of The Industrial Commission of Utah, this cause came on regularly to be heard this eighteenth day of November, 1921, before Hon. P. A. Thatcher, Commissioner, at 10:00 o'clock a. m., in Room 324 State Capitol, Salt Lake City, Utah.

The applicant was present in person and represented by Judge F. C. Loofbourow; the defendant being represented by Booth, Lea, Badger & Rich, Mr. Benj. L. Rich present.

B. F. SPRY,
Reporter.

Index.

Mary Ann Parramore	Page	1 to 5
Stipulations	"	5 to 6
"	"	22
"	"	23 to 25
John Reynolds	"	6 to 21
Clarence L. Garner	"	21
Rees Thomas	"	22 & 25
Fred W. Hoffman	"	25 to 33
Wm. Westerman	"	34 to 35

Mrs. MARY ANN PARRAMORE was called to the stand and duly sworn:

Examination.

By Judge Loofbourow:

Q. State your name please?
A. Mary Ann Parramore.
Q. Mrs. Parramore how old are you?
A. I will be fifty-seven next month.
Q. Were you the wife of Joseph Parramore, who was killed on the ninth day of August, 1921?
A. Yes.
Q. Have you your marriage license with you?
A. Yes sir.

Mr. Rich: We don't question that.

Judge Loofbourow: When were you married Mrs. Parramore?
A. On August 14, 1883.
Q. And you were living with Joseph Parramore at his wife at the time of his death?
A. Yes.
Q. Mrs. Parramore, had you children living at home at the time of your husband's death?
A. Yes sir.
Q. Children of yourself and Joseph Parramore?
A. Yes sir.
Q. Who were they? Ones named here, Owen Parramore?
A. Yes sir.
Q. How old was he?
A. Twenty.
Q. And Ruth, how old was she at that time?
A. Seventeen.
Q. And Luella?
A. She was fifteen.
Q. Now what if any occupation did Luella have on the ninth day of August, 1921?
A. Not any.
Q. Was she attending school?
A. Yes sir.
Q. And what is the fact, whether or not she was entirely dependent for support upon her father, Joseph Parramore; had she any other source of support?
A. No.
Q. She was living at home?
A. Yes.
Q. And being taken care of by her mother and father?
A. Yes.
Q. And had Ruth any occupation at that time?
A. No not at that time.

Q. She was living at home and dependent upon her father for support?
A. Yes.
Q. And Owen, had he any occupation at that time?
A. Yes he was working at the time.
Q. Where?
A. He was working for Fleischmann Yeast Company.
Q. Was he regularly employed?
A. Yes.
Q. For how long had he been employed?
A. I think as near as I can say he has been working for them on and off for about a year.
Q. What was he receiving as wages?
A. Somewhere around $75.00 a month.
Q. And was supporting himself in that way?
A. Yes sir.
Q. Living at home?
A. Yes sir.
Q. Now were you employed in any other way except as housewife at home?
A. No sir.
Q. And were you dependent upon your husband for your support?
A. Yes.
Q. And that has been true right through your married life?
A. Yes sir.
Q. On the morning of the ninth day of August Mr. Parramore left home to go to work as usual?
A. Yes.
Q. Where was he employed at that time?
A. Cudahy Packing Company.
Q. What was his position?
A. Engineer.
Q. How many days in the week did he work?
A. Seven.
Q. That is, it was continuous occupation—seven days in the week?
A. Yes.
Q. And what were his wages?
A. $35.00 I think.
Q. $35.00 a week?
A. I think that's correct.
Q. And that was his only source of income was it?
22 A. Yes sir.
Q. What time did he leave home that morning?
A. About 6:30 that morning.
Q. Was he in his usual health at that time?
A. Yes sir.
Q. Able to work?
A. Yes.
Q. Was he killed on that day?
A. Yes sir.

Q. And you didn't go with him to work; you don't know the circumstances of his death?
A. No sir.
Q. He didn't own an automobile did he?
A. No sir.

Examination.

By Mr. Rich:

Q. Did Mr. Parramore have any particular way of going to work—did he go on the Bamberger Electric, by automobile or on a street car, or didn't he have any particular way?
A. Most all the time he went on the Bamberger.
Q. Sometimes he didn't though you know?
A. I believe once in a while he took the street car.
Q. And on this particular morning he was riding with Mr. Reynolds in Mr. Reynolds' automobile?
A. Yes.
Q. How long had he been working at the Cudahy plant?
A. I think about two years.
Q. And he had been working on the day shift had he at this particular time, for how long?
A. I don't know whether he had really finished the first week of his day shift or not.
Q. Did he work in shifts of about two weeks?
A. Yes.
Q. And then was on another shift?
A. I think so.
Q. Do you know what time he got home the day before he was killed, or on the eighth of August?
A. He usually used to get home around four o'clock.
Q. Around four o'clock?
A. Yes sir.
Q. Now is your son Owen twenty-one years old now?
A. No sir.
Q. When will he be?
A. Next July, the 26th.
Q. And how much money is he earning now?
A. I think he got a raise; I think he is earning $80.00 now
23 Q. Your daughter, Ruth, is she working now?
A. Yes.
Q. And how much is she earning?
A. She is earning $9.00 a week I think.
Q. But she was not working at the time Mr. Parramore was killed
A. Only kind of little, some of a vacation. It was not steady at that time. She was working a day now and then.
Q. And your youngest daughter Luella is not working any?
A. No she has never worked.
Q. Do you own your own home?
A. No sir.

Q. You rent?
A. Yes.
Q. Ever since you have lived here?
A. Yes.
Q. How long have you lived here?
A. We have been in Salt Lake forty years last week.
Q. This has always been your home?
A. Yes.
Q. Did Mr. Parramore leave any life insurance?
A. No sir.
Q. Did he leave any property, lots, stock, etc.?
A. Nothing whatever.
Q. How old was he when he died?
A. 59 I think.
Q. When he left home that morning about 6.30 August ninth do you know how he intended to get out to the plant?
A. He told me he was going to meet Mr. Reynolds that morning and ride out with him.
Q. But you say usually he took the Bamberger?
A. Yes sir.
Q. Do you know what time he would have to take the Bamberger?
A. No I don't. He usually left home about half past six to make the Bamberger.
Q. Did it usually leave at seven?
A. No he left at 6.30.
Q. I mean the Bamberger left about seven, on the hour?
A. I think so.
Q. Did he go up to meet Mr. Reynolds that morning?
A. Yes.
Q. He chose his own way of going up to the plant?
A. Yes.
Q. And of course what expense there was in connection with it he paid himself?
A. Yes.
Q. That was his custom and what he always did?
A. Yes he used to buy these $2.00 books.
Q. Do you know why, on this particular morning, he went out with Mr. Reynolds instead of on the Bamberger?
A. No he didn't say, except Mr. Reynolds was going out alone and he thought he would ride with him.
Q. Well he would save the expense of transportation?
A. Yes I guess that is what he was figuring too.

Mr. Thatcher: I would like to see if we can stipulate to some of the facts. I assume the particular contention is whether this accident arose out of or in the course of employment?
Mr. Rich: Yes.
Mr. Loofbourow: We contend it arose in the course of his employment.
Mr. Thatcher: Can we stipulate that Mrs. Mary Ann Parramore and the children stated were the wife and children of the deceased

and as such were dependent upon Mr. Parramore for their maintenance and support?

Mr. Rich: The wife and daughters were.

Mr. Rich: Mrs. Parramore, the son contributed his wages toward the family's support as well as himself?

A. He used to give me $5.00 a week and then he clothed himself

Mr. Thatcher: And can we stipulate that the Cudahy Packing Company is a corporation subject to the Compensation Law of the state of Utah, and are designated as self-insurers under the Act?

Mr. Rich: Yes.

Mr. Thatcher: That the deceased, Joseph Parramore, was an employee of that company?

Mr. Rich: He was an employee prior to August ninth and had he reached the premises and reported for duty August ninth he would have been an employee.

Mr. Loofbourow: But he had not been relieved from his employment at the time of his death.

Mr. Thatcher: That he was receiving a wage of $35.00 per week working seven days per week?

Mr. Rich: Yes, prior to the time of his death.

Mr. Thatcher: That he was a citizen of the United States and that he was killed by accident on the ninth day of August, 1921?

Mr. Rich: We admit that yes, but I think we ought to further qualify it that he was killed upon the right of way of the D. & R. G.

Mr. Thatcher: If you stipulate any further than that he was killed on that day by accident——

Mr. Rich: Yes.

Mr. Loofbourow: Yes.

Mr. Thatcher: Is that agreed to Judge?

Mr. Loofbourow: Yes by Mrs. Parramore and the dependents.

Mr. Rich: Yes.

Mr. JOHN REYNOLDS (colored) was called to the stand and duly sworn:

Examination.

By Judge Loofbourow:

Q. Your name is Reynolds; what are your initials Mr. Reynolds
A. John.
Q. How old are you Mr. Reynolds?
A. Forty-nine.
Q. Where do you live?
A. 606 South Third West.
Q. In Salt Lake City, Utah?
A. Yes sir.
Q. W-ere are you employed at the present time?
A. Cudahy Packing Company.
Q. How long have you been employed by that company?

A. Going on my fourth year.
Q. Where is the plant of that company located?
A. North Salt Lake.
Q. How far *as* that from Salt Lake City,—I mean from say First South and Main Street, Salt Lake City?
A. It is about six miles. Six or seven.
Q. And in what direction from First South and Main in Salt Lake is it?
A. North.
Q. Is there a main highway leading between Salt Lake and Ogden,—a paved highway?
A. Yes sir.
Q. And how near to the Cudahy Packing Company does that highway run,—the Salt Lake and Ogden highway?
A. I think it is about a half or three-quarters of a mile.
Q. Is that the main traveled way between Salt Lake and Ogden and intermediate points?
A. Yes sir.
Q. For persons travelling by automobile or team?
A. Yes sir.
Q. Now is there a street car line that runs north from Salt Lake City?
A. Yes sir.
Q. And how far does that run; how near does it come to paralleling the Salt Lake and Ogden highway you have described?
A. At the cross-road it crosses the highway.
26 Q. You mean the street car track crosses this Ogden and Salt Lake highway about a point where you would leave the highway to go west to the packing plant?
A. No sir.
Q. Are the street car tracks and the highway pretty close together at that point?
A. The street car crosses the highway.
Q. How far from where you would turn west to go to the Cudahy plant?
A. About three blocks.
Q. This side from where you would turn west to go to the packing plant?
A. About three city blocks.
Q. And from that point up to that point going north on the Centerville street car line the street car goes west of the Salt Lake and Ogden highway?
A. No the street car turned kind of northeast from the highway, crosses the highway.
Q. At the point where you have described it crosses to the east side of the highway?
A. Yes sir.
Q. But before it crosses that point the street car track is west of the highway between that point and Salt Lake City?
A. Yes sir.
Q. And the Cudahy plant you say is about one-half or three-quar-

ters of a mile west from this Salt Lake and Ogden highway?

A. I judge it is about.

Q. And is there a road connecting the Cudahy Packing Company's plant with this Salt Lake and Ogden highway.

A. Is it connected?

Q. Is there a road between the Cudahy plant and this Salt Lake and Ogden highway?

A. Yes sir.

Q. That is the generally travelled highway running east and west?

A. Yes sir.

Q. And it runs from this Salt Lake and Ogden highway west to and to some extent beyond the Cudahy Packing plant?

A. Yes.

Mr. Rich: For several miles beyond.

Mr. Loofbourow: Yes until it reaches the duck swamps.

Mr. Loofbourow: And was that the road; that is, this Salt Lake and Ogden highway and the road running west, you generally took for the road running to the Cudahy Packing plant?

27 A. Yes sir.

Q. Was there any other practical way of going if you went from Salt Lake to the Cudahy Packing plant?

A. I don't know of any other road.

Q. You had been working out there two years?

A. Yes sir.

Q. Was that the road commonly used by employees of the Cudahy Packing plant who lived in Salt Lake City going to and from their work at the Cudahy Packing plant?

A. Yes sir.

Q. Do you know about how many persons there are engaged at the plant?

A. No sir I do not.

Q. Can you tell us about what proportion of these employees live in Salt Lake City?

A. Well I should judge from the looks that more live north.

Q. That is, around the plant, than in Salt Lake City?

A. North of the plant somewhere.

Q. Would you say that it was close to half or would you say only about one-third lived in Salt Lake City.

A. Well I can't say.

Q. Would you say as many as one-third lived in Salt Lake?

A. I judge there are.

Q. You would judge there are as many as one-third of these employees lived in Salt Lake City?

A. Yes.

Q. And came back and forth from the plant to Salt Lake City?

A. Yes.

Q. And do these employees use this road you have described running west from the Salt Lake and Ogden highway to the Cudahy Packing plant?

A. Yes.

Q. In going to and from their work?
A. Yes sir.
Q. Now in going to the Cudahy plant from this Salt Lake and Ogden highway you have described over the road which runs west, do you cross any railroad tracks?
A. Yes sir.
Q. What tracks do you first cross?
A. The first one is the Bamberger.
Q. Now just a moment, is there more than one set of rails there? Is it single or double track?
A. Double track, the Bamberger.
Q. Continuing on toward the plant there, what tracks do you next cross?
28 A. The Bamberger.
Q. Is that what they call the transfer line between the steam lines and the Bamberger?
A. Yes sir.
Q. That is the transfer track?
A. Yes.
Q. Then what tracks next do you meet?
A. The Short Line.
Q. And how many tracks are there there?
A. I think there is about three.
Q. That is the short line. Now what is the fact as to whether or not that is the main line of the Short Line between Salt Lake and Ogden?
A. Yes sir it is.
Q. One of these tracks is the main line track?
A. Yes.
Q. Continuing west what other tracks do you cross going to the plant?
A. Rio Grande.
Q. What is that, single or double?
A. Single.
Q. Is that the main line track between Salt Lake and Ogden?
A. Yes sir.
Q. Continuing on west what if any tracks do you cross, railroad tracks?
A. There is a switch in there.
Q. One switch. Now do you cross these railroad tracks in going this distance of one-half or three-quarters of a mile from the Ogden and Salt Lake highway to the Cudahy Packing plant?
A. Yes.
Q. That is eight tracks, the main line of the Bamberger, the main line of the Short Line and the main line of the Rio Grande you must cross going that distance?
A. Yes sir.
Q. How near to the Cudahy Packing plant building does the D. & R. G. run?
Mr. Rich: If he hasn't measured it I object to the answer. We will produce the exact measurements.

Mr. Thatcher: If it is merely as his judgment there can be no objection.

Mr. Loofbourow: Have you any judgment how far that D. & R. G. track is from the Cudahy buildings?

A. I haven't paid any attention. It is close.

Q. It is close is it?

A. Yes.

29 Q. Have you ever continued on this east and west road you describe west of the Cudahy Packing Company plant?

A. No sir.

Q. You never have gone from Salt Lake City to the Cudahy Packing Company's plant by going west across the river and along through the swamps and up to the Cudahy plant without crossing the tracks?

A. No sir.

Q. You have never tried that?

A. No sir.

Q. Now on the morning of the ninth day of August Mr. Reynolds, you were driving your own automobile?

A. Yes sir.

Q. It didn't belong to the Cudahy Packing Company?

A. No sir.

Q. And they had no ownership or control over it?

A. No sir.

Q. You were driving it yourself?

A. Yes.

Q. It was a Ford car you bought?

A. Yes.

Q. Was Mr. Parramore riding with you?

A. Yes.

Q. And also Mr. Thomas?

A. Yes.

Q. Had these men paid you anything for their ride or had you simply taken them as an accommodation to them?

A. Just as an accommodation.

Q. Had you gone out on the Ogden and Salt Lake highway?

A. Yes sir.

Q. Then had turned west to go to the plant?

A. Yes sir.

Q. And was that the shortest and most practical route you know of to get from Salt Lake City to the Cudahy plant?

A. Yes.

Q. And had you crossed all these tracks you described except the D. & R. G. track?

A. Yes sir.

Q. Was your automobile struck on the main line track of the Denver & Rio Grande Western Railroad?

A. Yes sir.

Q. By an engine of the D. & R. G.?

A. Yes sir.

30 Q. The engine being driven south and you going west toward the plant?

A. Yes.
Q. And was that the occasion of Mr. Parramore being killed?
A. Yes that's the occasion.
Q. He was killed right there?
A. Yes.
Q. The automobile was demolished?
A. Yes.
Q. You were injured?
A. Yes.
Q. Mr. Thomas was injured?
A. Yes.
Q. And Mr. Parramore was killed?
A. Yes sir.
Q. And when the engine struck the automobile was the auto thrown to one side?
A. Yes.
Q. Where was it thrown?
A. Over an embankment.
Q. How near the right of way fence was it thrown?
A. Well I couldn't say. I don't know just how close it was.
Q. It was partly through the fence wasn't it, partly through the right of way fence on the west side of the track?
A. We were thrown through the cattle guard.
Q. Yes that is the cattle guard on the east side of the right of way; I am talking about the cattle guard on the west side.
A. Yes. Well I don't know about that.
Q. Where was it thrown?
A. Over the embankment.
Q. Were you thrown to the west or east side of the main line track?
A. West side.
Q. Was Mr. Parramore thrown to the west side?
A. Yes sir.
Q. And the automobile was thrown to the west side?
A. Yes.
Q. And Mr. Thomas was thrown west of the main line?
A. I don't know where Mr. Thomas was.
Q. You know where you were?
A. Yes.
Q. You know Mr. Parramore was thrown west?
A. Yes.
Q. And the automobile was thrown west of the tracks?
31 A. Yes.

Examination.

By Mr. Thatcher:

Q. You said that the employees who live south of the plant proceeded to the plant over the highway and then west by automobile. Did you mean to infer that as a fact?

A. Beg pardon?
Q. Do they all go to work by automobile?
A. No sir.
Q. How otherwise do they go to work?
A. Street cars.
Q. Then part of them go by the Bamberger route?
A. Yes.
Q. And where do these employees leave the Bamberger road?
A. At the station.
Q. Where is the station with reference to that road runni
west?
A. Right on that road.
Q. Then how do they go from that point to the plant?
A. They go west.
Q. They walk from that point west?
A. Yes.
Q. Over the same tracks?
A. Yes.
Q. What time of day were you to report to work?
A. 7:30.
Q. What time did the accident occur?
A. About fifteen or twenty minutes after seven.
Q. 7:15 or 7:20.

Mr. Loofbourow: Where do people who go by street car from S
Lake City who are employed at the Cudahy plant, leave the street c
A. Right at the cross road.
Q. And then which way do they proceed?
A. They come down the public highway on this road to the pa
ing house.
Q. They walk down this same east and west road?
A. Yes sir.

Examination.

By Mr. Rich:

Q. Now this east and west road is a public county road is it
A. Well I don't know, but I know it is a public road.
Q. It is used generally by the public?
A. Yes.
Q. It is used by not only the employees of the Cudahy Pac
Company who go to work that way, but it is also used
32 farmers and owners of property to the west of the plant?
A. Yes sir.
Q. You know that that county road runs farther west than
Cudahy plant?
A. Yes.
Q. It wasn't built there for the particular purpose and benefit
use of the Cudahy property?
A. No.
Q. It has been there for years?

A. I don't know.
Q. And you know there are cultivated farms and pastures west of the Cudahy plant?
A. Yes.
Q. And the employees of the stock yards use that road?
A. Yes.
Q. And before they can get over that road to the Salt Lake Union Stock Yards they have to cross all these tracks?
A. Yes.
Q. Not only the Rio Grande, but the Short Line and Bamberger.
A. Yes.
Q. Then the road to the stock yards branches off from that east and west highway right after it crosses the D. & R. G. tracks?
A. Yes.
Q. And then that road is east of the Cudahy plant and west of the Rio Grande tracks?
A. Yes.
Q. The road that goes to the stock yards, that branches off the county highway running east and west, that road is east of the Cudahy plant and west of the D. & R. G. tracks?
A. Yes sir.
Q. And people who use the stock yards travel that way to get to the stock yards?
A. Yes sir.
Q. Not only the employees of the stock yards, but sellers, buyers and visitors who travel to the livestock shows?
A. Yes.
Q. They travel over all these tracks?
A. Yes.
Q. And they have to cross all these tracks before they get on that road running to the stock yards. That is true?
A. Yes.
Q. Do you know if that east and west highway that branches off and runs west from the paved highway connects up with the generally travelled road leading to the desert, used by drovers of cattle and sheep? Do you know that?
33 A. Yes.
Q. Just tell us what you did that morning, where you picked up Mr. Parramore, and took him to the plant. Where was that the morning of August ninth; where did you pick him up?
A. Second West and First North I believe.
Q. What time in the morning was that?
A. I judge it was about seven or five minutes to seven.
Q. Was that by pre-arrangement or did you see him standing there?
A. I saw him standing there waiting for his car.
Q. You hadn't agreed before that to take him out?
A. No.
Q. You were going out yourself in your two-seated Ford, driving it yourself?
A. Yes.

Q. You had owned that for a year?
A. Yes.
Q. And you saw Mr. Parramore standing there and you drove u and asked him if he wanted to go to the plant?
A. He motioned at me and I stopped and picked him up.
Q. You knew he was an employee there and he knew you were
A. Yes.
Q. Then he got in with you?
A. Yes.
Q. Front seat?
A. Yes.
Q. Which side did he sit?
A. On the right.
Q. Your car is a left hand drive?
A. Yes.
Q. And you proceeded out to the plant?
A. Yes.
Q. Did you stop to pick anyone else up?
A. Yes.
Q. Who?
A. Mr. Thomas.
Q. Where did you pick him up?
A. Near the Husler Flour mill, or some flour mill out there.
Q. A flour mill north of the St. Marks Hospital?
A. Yes.
Q. And he signalled for you to stop?
A. I knew him and knew where he was working and thought h was on his way to work so I stopped.
Q. And he got into the back seat?
34 A. Yes.
Q. And you proceeded north to the plant.
A. Yes.
Q. Now can you describe all the tracks you crossed from the tin you picked up Mr. Parramore that morning. When you got o to the St. Mark's Hospital do you recollect you crossed a street c track, a Center Street line?
A. Yes sir, we crossed that.
Q. And as you proceeded further about a mile do you recall railroad track that crosses the highway running into the proper of the Lambert Paper factory and the old packing house,—Guss Block I think is the name?
A. Yes.
Q. That is a steam track?
A. Yes sir.
Q. And going out further beyond Beck's Hot Springs you cro the Centerville tracks of the street car system?
A. Yes.
Q. And then turning west on this county road you cross thr tracks of the Bamberger?
A. Yes.
Q. And then proceeding farther west about one-quarter of a m or less you cross the main line of the Short Line?

A. Yes.
Q. Three tracks,—two main line and a side track?
A. Yes.
Q. And then a distance of something over one hundred feet from the Short Line tracks west is the track of the D. & R. G. main line?
A. Yes.
Q. And all that is before you get the premises of the Cudahy Packing Company?
A. Yes sir.
Q. And after you cross the D. & R. G. tracks a little distance you run upon the property of the Cudahy Packing Company?
A. Yes.

Mr. Loofbourow: Do you know just where the property lines of the Cudahy Packing Company are?
A. I think I do.
Q. You have seen the deeds?
A. No, but I know by the line.

Mr. Rich: There is a fence around the Cudahy plant?
A. I believe there are.
Q. A high wire fence?
A. Yes.
35 Q. That fence surrounds the building, does it not, with a yard?
A. Yes sir I think so.
Q. That fence runs north and south to the east of the building does it not?
A. Yes sir.
Q. And the road which leads to the stockyards is east of that fence?
A. Yes sir.
Q. And yet that road is west of the D. & R. G. tracks isn't it?
A. Yes.
Q. Then do you recall the fence runs east and west on the north side of the county highway?
A. Yes sir.
Q. And there is a gate to go in the fence is there not?
A. On the county road.
Q. A gate to go in the wire fence on the approach to the Cudahy Plant?
A. Yes.
Q. And then the building is located farther north?
A. Yes sir.
Q. Then to get to the plant, crossing all these railroad tracks you proceed west along the highway until you get to the gate of the plant?
A. Yes.
Q. West of the Rio Grande tracks?
A. Yes.
Q. Then you go in the gate and go a distance north and west to get into the building?
A. Yes.

Q. And Mr. Parramore's work was in the building?
A. Yes.
Q. He was a stationary engineer?
A. Yes.
Q. His work was confined within the enclosure of the building; not in the yard?
A. Yes sir.
Q. What are your duties there?
A. Fireman.
Q. Right adjoining the engine room?
A. Yes.
Q. You were the fireman for Mr. Parramore?
A. For the Cudahy Packing Company.
Q. I know but your firing was used in connection with his
36 engine room;—do your rooms adjoin?
A. There is a door between.
Q. How long have you known Mr. Parramore?
A. I judge about five or six months,—maybe a little more.
Q. How fast did you drive your car after you picked Mr. Parramore and Mr. Thomas up?

Mr. Loofbourow: I think this is entirely immaterial.
Mr. Thatcher: I don't see any purpose of it.
Mr. Rich: I withdraw the question.

Q. What was your custom generally as to going to work; would you go in your own car yourself?
A. Yes sir.
Q. Would you go alone or would you occasionally pick up people?
A. I would pick up someone, people I knew going to the plant and sometimes I picked up somebody going along the road.
Q. Strangers?
A. Yes sir.
Q. Did you have any particular people to pick up each morning?
A. No sir.
Q. But you would usually pick up some employee you would see standing around?
A. Yes.
Q. Had you ever taken Mr. Parramore out before that morning?
A. I believe he rode with me once or twice.
Q. Had you taken Mr. Thomas out before?
A. Mr. Thomas I mean.
Q. But Mr. Parramore, had you taken him out before?
A. Yes.
Q. Just as an accommodation?
A. Yes sir.
Q. Did you charge any of them anything for taking them out?
A. No sir.
Q. Did a number of employees go out by automobile besides yourself?
A. Yes sir, quite a number.

Q. And some went out by the street car?
A. Yes.
Q. And some by the Bamberger electric?
A. Yes.
Q. Those who went by the street car had to walk farther than those going by the Bamberger?
A. Yes sir.
Q. Do you know how the employees working east and north of this plant went to work?
37 A. Some on the Bamberger and some on the street car.
Q. And some by automobile?
A. Yes sir some by auto.
Q. The employees chose their own manner of coming to work?
A. Yes I suppose so.
Q. So far as you know?
A. Yes sir.
Q. And the Cudahy Packing Company didn't have anything to do or say as to how the employees got there?
A. No sir.
Q. The employees paid their own fare and got there the best they could?
A. Yes.
Q. Do you know a crossing of the tracks north of the stock yards?
A. I don't know that there is.
Q. You don't know there isn't?
A. No sir.
Q. You don't know the employees who reside north of the plant use that crossing instead of coming down to the main highway?
A. I don't know that.
Q. Now upon this morning Mr. Parramore was killed it was a light sunlight morning was it?
A. I believe it was.
Q. And the Rio Grande engine that struck you was running alone, or was it pulling anything?
A. I heard it was.
Q. Who first drew your attention to the engine?

Mr. Loofbourow: I object to all that as not material to this investigation.
Mr. Thatcher: What is the purpose of that question Mr. Rich?
Mr. Rich: We have found out that the engine hit him. Now we want to bring out the details as to who called his attention to it.
Mr. Thatcher: About the carelessness.
Mr. Rich: I am not trying to show carelessness or negligence. This witness says an engine hit him. Does he know that fact.

Mr. Rich:

Q. How do you know it was an engine?
A. I saw it after I got up.
Q. Did you see it before it hit you?
A. I saw it when it was right on me.

Q. Was your attention directed to it by someone?
A. Yes sir.
Q. Who?
A. Mr. Thomas.
Q. At that time you had not yet got on to the Rio Grande tracks?
38 A. I don't believe I know that.
Q. Did you lose consciousness?
A. I don't think I did.
Q. After you were struck you saw the engine was alone? Was it then stopped?
A. I don't think the engine stopped.
Q. When it hit your car it knocked it south through the cattle guard?
A. Yes.
Q. And it rolled down the bank?
A. Yes.
Q. But didn't go through the right of way fence to the west of the track?
A. I don't remember.
Q. You were taken to the hospital after?
A. Yes sir.
Q. And did you see Mr. Paramore was dead before you went to the hospital?
A. Mr. Parramore I think was dying at the time.
Q. Do you know what time Mr. Parramore was to show up for work that morning,—what time the plant commences,—what time the whistle blew?
A. 7:30.
Q. And the accident occurred at 7:15 or 7:20?
A. Somewhere along there.
Q. And you had not yet reached the premises, the real estate of the Cudahy Packing Company?
A. No sir.
Q. Do you know if the Cudahy Packing Company exercises any control or supervision over the Bamberger, the D. & R. G. or the Short Line crossings or any of these roads?
A. I know they load meat there.
Q. But you don't know that they exercise any control of the traffic there?
A. No.
Q. Now this highway that runs east and west and passes the Cudahy plant, passes the plant going east and west at the south of the plant?
A. Yes.
Q. That is, the plant is located north of this highway?
A. Yes sir.

Mr. Thatcher: Mr. Rich, do you think the witness is qualified to testify as to the holdings of the company?

Mr. Rich: No, but Mr. Loofbourow is asking about the dis-
39 tances and other things.

Mr. Rich: Now Mr. Reynolds do you have any judgment as to the distance between the Short Line tracks and the Rio Grande tracks to the west on that public highway?

A. I wouldn't say positively but it looks to me like it was about fifty feet.

Q. It might be more?

A. Yes.

Q. But the Rio Grande tracks and Short Line tracks are within a short distance,—fifty feet or less, parallel, at that crossing?

A. Yes.

Q. Now is the road between the Short Line tracks and Rio Grande tracks level on that highway?

A. It is a pretty rough crossing.

Q. But do you go down before you cross these tracks or is that pretty level?

A. It is level there.

Mr. Loofbourow: Mr. Reynolds, suppose this represents the main line of the D. & R. G., and this is the east and west road and you were coming along this way. Now the main plant of the Cudahy Packing Company is located over in here,—I mean to the northwest of where you crossed the main line of the D. & R. G.?

A. Yes sir.

Q. Now that is on the north side of the east and west road?

A. Yes sir.

Q. Now does the Cudahy Packing Company use any buildings over here on the south side of the road?

A. Yes sir.

Q. They have some sheds over there?

A. Yes.

Q. That they use to store trucks and autos in?

A. Yes.

Q. And those are the trucks and autos that operate from the factory here, aren't they?

A. Yes.

Q. On the south side of the east and west road,—on the left as you cross the D. & R. G. tracks there are sheds over there?

A. Yes.

Mr. Rich: The county highway is not closed up at all?

A. No sir.

Q. There is a fence on the north side and a fence on the south side of this street. It is a regular street?

A. Yes.

40 Q. That runs down passed the plant going west?

A. Yes sir.

Q. Do you know the width of the road that leads to the stockyards, which are located north of the Cudahy plant?

A. Yes.

Q. Do you know the width of the road between the fence of the Cudahy property at the east and the Rio Grande right of way fence,—do you know how wide that road is?

A. No sir.

Q. But in order to get into that road after you cross the Rio Grande tracks you turn north after you get over the tracks?

A. Yes sir.

Mr. CLARENCE L. GARNER was called to the stand and duly sworn.

Examination.

By Judge Loofbourow:

Q. What is your full name?

A. Clarence L. Garner.

Q. How old are you?

A. Twenty-six.

Q. What is your occupation?

A. I am an operator at the Utah Oil Refinery.

Q. What relation are you to Mrs. Parramore?

A. Son in law.

Q. You married her daughter?

A. Yes.

Q. Now have you made any investigation of this road that runs east and west through the property or between the two pieces of property, if you wish to describe it that way, of the Cudahy Packing Company?

Mr. Thatcher: Before he answers that question. Is it the purpose to establish the relationship of these tracks to the property and these roads?

Mr. Loofbourow: The purpose is to show it is a practical impossibility for people to go over any other than that road.

Mr. Thatcher: Would it expedite matters if the Commission would go out there and survey the premises.

Mr. Loofbourow: Yes.

Mr. Rich: Perfectly satisfactory.

Mr. Loofbourow: I want to show by this witness that the road goes out in that country and are impassable for the most part of the year.

Mr. Thatcher: We can investigate that but I think it is not necessary. It is established that this main highway is the practical way of getting to the plant.

Mr. Rich: We agree, but other roads lead to it.

41 Mr. Thatcher: Can we stipulate that this is the customary and generally used road to and from the plant?

Salt Lake City. There is another way of getting there but it isn't practical. Then it is further stipulated that employees living north of the plant, many of them approach the plant by another road leading to the plant.

Mr. Loofbourow: Yes and many of them by this road.

Mr. Rich: Yes.

Mr. Thatcher: If that can be stipulated I think there is no reason of going further into that question.

Have you any more witnesses Mr. Loofbourow?

Mr. Loofbourow: I think that's all.

Mr. Thatcher: Mr. Rich, have you any more witnesses?

Mr. Rich: Yes, Mr. Thomas, Mr. Westerman and Mr. Hoffman.

Mr. REES THOMAS was called to the stand and duly sworn.

Examination.

By Mr. Rich:

Q. Your name is Rees Thomas; you are thirty-two years of age and you were an employ- of the Cudahy Packing Company on the ninth day of August, 1921?

A. Yes sir.

Q. You knew Mr. Parramore?

A. Yes sir.

Q. You were with Mr. Reynolds, the colored man who just testified, and Mr. Parramore in Mr. Reynolds' automobile on the morning of August ninth at the time Mr. Parramore was killed?

A. Yes sir.

Q. What time was that?

A. At the time of the accident?

Q. Yes.

A. I should judge about 7:23. I missed my auto I should judge five minutes and I generally get out there about 7:15 or 7:16.

Q. And Mr. Reynolds had picked you up as an accommodation to you?

A. Yes.

Q. And taken you out to work?

A. Yes.

Q. And at the time he picked you up Mr. Parramore was riding with him?

A. Yes.

Q. Now do you know the manner of the employees living in Salt Lake of getting out to their place of work at the plant generally,— how they go out?

42 A. Some auto, some street car and some on the Bamberger.

Q. Does the Cudahy Packing Company have anything to do with the matter of the employees going to work?

A. No sir.

Mr. Loofbourow: I think that can be conceded that they simply repo t for work at the plant.

Mr. Rich: The manner of their transportation is their own chosing?

Mr. Loofbourow: Yes.

Mr. Rich: By their own methods, whether by street car, Bamberger electric, automobile or otherwise?

Mr. Loofbourow: That is my information.

Mr. Rich: That is a fact, Mr. Thomas?

A. Yes.

Q. In going out from Salt Lake City do you know what tracks one has to cross in going from the highway to the plant?

Mr. Thatcher: I wonder if that can't be stipulated also. Is it not a fact that they cross the three tracks of the Bamberger, three tracks of the Short Line and one of the D. & R. G.?

Mr. Rich: I would like to show all the tracks they cross from Salt Lake City to the plant. Our answer is that the defendant has no more control or supervision or jurisdiction over one track than it has another, and that it has no supervision over any of the tracks, whether it is the D. & R. G., Short Line, Bamberger or the city street car tracks, and in getting from Salt Lake City to the plant all these tracks have to be crossed.

Mr. Thatcher: It seems that is such a simple fact that the Commission will observe all these in going out there.

Mr. Loofbourow: I believe we can agree to the number of tracks going out. Going out what are the tracks?

Mr. Rich: Leaving Salt Lake City and going out north along the paved highway one crosses the city street railway tracks at the St. Marks hospital; proceeding north from the hospital one crosses the North Salt Lake street car tracks, then some spur tracks leading up around the estray pound; proceeding further along the paved highway one crosses the steam railroad tracks leading up to the Ogden Packing & Provisions Company and the Lambert Paper Company; proceeding further and after passing Beck's Hot Springs the Centerville street car line; then after reaching the east and west highway we are going west one crosses the double track of the Bamberger and a single track of the freight or connecting line (transfer track) further west, and going down a distance of about one-quarter of a mile one crosses the main lines of the Oregon Short Line double track, with a third Short Line track running to the west, and at a distance further west of 120 feet and nine inches west of the Short
43 Line crossing one crosses the main line single track of the D. & R. G. R. R. and then proceeding west one goes one hundred feet along the said county road to the gate going into the premises of the Cudahy Packing Company; after crossing the D. & R. G. track going west and after passing the roadway west of the tracks and east of the Cudahy Property and leading to the stockyards and property north one crosses two switch tracks leading into the plant of the Cudahy Packing Company; that between the D. & R. G. tracks where the accident occurred and the gate leading through the wire fence surrounding the Cudahy Packing plant there is a distance of one hundred feet; that from the gate to the building of the Cudahy Packing plant steps is a distance of seventy-one feet; that from the steps of the plant to the door of entrance is a distance of forty feet; that proceeding west along the County highway which runs south of the Cudahy plant and after passing the two switch tracks beforementioned one crosses a further track west leading into

the Cudahy plant and further west along said road one crosses a further track upon which the stockyards receive and discharge the stock that comes into the Salt Lake Union stockyards.

Mr. Loofbourow: What bearing would those two have?

Mr. Rich: Because it shows the whole road is crossed with tracks, east and west of the plant.

Mr. Loofbourow: While you have your map open may it be stipulated that the Cudahy Packing Company has belongings on the south side of this road that are used in connection with this plant? Whether it owns or leases this I don't know. The present day maps of Davis County show that the Cudahy Company owns this property.

Mr. Thatcher: Mr. Loofbourow you stipulated as to the roads?

Mr. Loofbourow: Yes I think that is approximately correct.

Mr. Loofbourow: I think we ought to stipulate that the distance from Salt Lake City to the point where Mr. Reynolds described the employees leave the Salt Lake and Ogden highway to go west to the plant is a little over five miles, and the distance from the point where they leave the Salt Lake highway to go west to the plant is from one-third to one-half a mile to the plant.

Mr. Thatcher: You agree to that Mr. Rich?

Mr. Rich: Yes.

Mr. Rich: And further that the Bamberger crossings, the Short Line crossings and the D. & R. G. crossing are all within that one-half or three-quarters of a mile.

Mr. Loofbourow: Yes, and that the other tracks mentioned are between Salt Lake City and the point where they turn off.

Mr. Rich: May we further stipulate that the distance from the residence of Mr. Parramore to the plant is a distance of about seven miles?

44 Mr. Loofbourow: I think that is approximately correct.

Mr. Rich: Mr. Thomas, did you know Mr. Parramore in his life time?

A. I just knew him a short time.

Q. Do you know where his work was confined and what his duties were?

A. Only what I heard that he was an engineer.

Q. Do you know he was a stationary engineer?

A. I couldn't swear that he was. I heard it.

Mr. Loofbourow: I don't think that is material at all in the matter of this case. I want to go on record as objecting to it.

Mr. Fred W. Hoffman was called to the stand and duly sworn:

Examination.

By Mr. Rich:

Q. Your name is Fred W. Hoffman and you are the Manager of the Cudahy Packing Company in Utah?

A. Yes sir.

Q. Having charge of all the property in Utah?

A. Yes sir.
Q. And did have during all the month of August, 1921?
A. Yes sir.
Q. Did you know Mr. Parramore who was killed August ninth?
A. Did I know him?
Q. Yes.
A. As I knew all employees, yes.
Q. Prior to August 9, 1921 he was an employee of the plant?
A. He was.
Q. And had been employed for how long?
A. I don't know. From hearsay he had been there about two years.
Q. What were his duties?
A. Stationary engineer.
Q. As stationary engineer where did he work?

Mr. Loofbourow: I want to note an objection to that. I can't see that it is material to this investigation.
Mr. Thatcher: I think the question is pertinent.
Mr. Rich: They claim this accident occurred in the course of his employment—arising out of it.
Mr. Thatcher: I think we should know something of his duties.

Mr. Rich: As stationary engineer where did he work?
A. In the engine room at the plant.
Q. Inside the plant?
A. Yes.
Q. What did he do as stationary engineer in the engine room?
A. His duties were to look after the machinery and see that it was properly oiled and running.
45 Q. Then his work was confined entirely within the building of the plant?
A. Absolutely.
Q. And within the engine room?
A. Except that he may have gone into parts of the cellar to take temperature. Whether he did that I don't know. He may have.
Q. There was nothing in his duties to take him outside of the building?
A. No.
Q. Now I have a map here of the Cudahy Packing Company at North Salt Lake. You have seen this map have you?
A. Yes.
Q. Looking at it with the words marked "west" on it; the words "East," North," "South,"—that would be the directions with regard to the property and location of the county road, which runs east and west and south of the plant?
A. Yes.
Q. And that correctly represents the location of the plant with the road and with the tracks, does it?
A. It does to the best of my knowledge.
Q. But it is the official plat of your property and is used?
A. Yes sir.

Q. Made according to scale?
A. Yes.
Q. It shows D. & R. G. track which is so marked?
A. Yes.
Q. It does not show the crossing of the O. S. L. tracks?
A. No.
Q. But these tracks do cross the highway?
A. Yes.
Q. Do you know the distance?
A. The distance from the inside of the O. S. L. track to the inside of the D. & R. G. track is 120 feet and 9 inches.

Mr. Thatcher: Mr. Rich, may I interrupt. That is well established and there is no use going over it again.

Mr. Rich: Do you know where there is a word on this plat marked "roadway" east of the plant? What roadway is that?
A. Roadway to the stockyards.
Q. Is that the generally used roadway to the stockyards?
A. It is.
Q. And in order to get on that right of way one has to cross the Rio Grande tracks?
A. One does.
46 Q. As well as all the other tracks east?
A. Yes.
Q. Is that a frequented road?
A. I would say just about as much frequented as the main road.
Q. Now people going out to the stock yards to buy and sell and employees of the stock yards and visitors to the stock shows all use that road?
A. Yes.
Q. That is the convenient way?
A. Yes.

Mr. Loofbourow: I wish to make an objection to that line of testimony. I don't think it is material to this case at all.

Mr. Thatcher: Your objection will be noted Judge. Mr. Rich, it has been conceded that that is a generally travelled public road, both going to the stockyards and marshes.

Mr. Rich: Does this county road stop at the plant or does it continue west?

A. It continues west.
Q. Is it a generally used road?
A. It is.
Q. Do you know how much it is used west of the plant?
A. I have seen a good many trucks go over there and many automobiles.

Mr. Thatcher: Mr. Rich, of course I want to give you all the latitude we can, but I think we have this well established.

Mr. Rich: The Commission can't tell by looking at the road how much it is used, particularly at certain times of the year. Our position is that this is a public road and does not stop at the plant.

Mr. Loofbourow: I believe it is a dedicated highway, according to the maps of Davis County, and it runs west of the plant.

Mr. Rich: Counsel has said it runs west to the marshes and duck ponds. We object to that. We want to show that this road is used west of the plant; that there are farms west, pastures and homes, and that it is used generally to drive sheep west to the desert and thousands of sheep go over it a year.

Mr. Loofbourow: We will concede that that road for one-quarter of a mile *passed* the plant is a worked highway and from that point on it is just a track along the flat.

Mr. Rich: Mr. Hoffman is this road used by property owners to the west and adjoining?

A. It is.

Q. Is there cultivated property to the west of that?

47 A. Yes.

Q. And pastures?

A. Yes.

Q. How is it used with regard to driving stock and using that in regard to taking stock upon the desert?

A. Well they drive bands of sheep by the thousands west and they turn off somewhere to go on to the desert. That is done every year and in fact this year,—which is my first year,—I would estimate thirty thousand sheep in bands of three to ten thousand at the time passed our plant going west.

Q. And they have had to cross all these tracks?

A. They crossed all these tracks.

Q. Who maintains that public highway?

A. As far as I know it is a public highway.

Q. It is kept up by Davis County?

A. That is my understanding.

Q. Does the Cudahy Packing Company exercise any control, supervision or jurisdiction whatsoever over the traffic on that highway running east and west?

A. It does not.

Q. Does the Cudahy Packing Company exercise any control, supervision or jurisdiction along any of the railroad tracks, either the Rio Grande or the Short Line or Bamberger to the east, or city street railway tracks to the south of the public highways?

A. It does not.

Q. Has it ever?

A. It has never to my knowledge.

Q. Do you know the distance of the roadway that is used by the stockyards east of the Cudahy plant and west of the D. & R. G. railway tracks?

A. You mean the length of the road?

Q. The width of the road?

A. I don't know positively but I would say a fifteen foot road.

Mr. Loofbourow: That is the roadway between the D. & R. G. tracks and the plant.

Mr. Rich: Is the Cudahy plant enclosed in a wire fence?

A. It is.

Q. As I understand it Mr. Parramore was coming to work on the morning of the ninth of August and was killed before he got to the premises?

A. That's what I understand.

Q. And it was in the day time?

A. Yes that is what I understand.

Q. You were not present?

A. No sir.

48 Q. But arrived later?

A. After the accident.

Mr. Rich: Will you stipulate Judge that the public highway running east and west has been dedicated and used a good many years and long years prior to the establishment of the Cudahy plant?

Mr. Loofbourow: I do not know. But I will not contend that this is a highway used exclusively for or by the Cudahy Packing Company. My idea is that it is a public highway maintained by Davis County, and used east and west of the Cudahy plant, and is used and open to the public in general.

Mr. Rich: And has been long prior to the establishment of the Cudahy plant?

Mr. Thatcher: I can't see that that is pertinent.

Mr. Loofbourow: I don't see how it is material. It is and was at the time Mr. Parramore was using it, a public highway.

Mr. Rich: Now Mr. Hoffman, at the time Mr. Parramore met with his injuries which resulted in his death, did the Cudahy Packing Company have any right to exercise jurisdiction or control of traffic on the highway over or along any of the railroad crossings?

A. No sir.

Q. The Salt Lake Union stockyards use that public highway?

A. Yes.

Q. Employees, purchasers, visitors?

A. They do.

Q. Do you know there are livestock shows and exhibitions given yearly at the Salt Lake Union stockyards?

A. Not yearly but they have given shows.

Mr. Loofbourow: Since you have been here?

A. No not since I have been here.

Q. You don't know anything about it except hearsay?

A. Except there is one scheduled for next year.

Mr. Rich: What other property besides the Union Stockyards use that highway and cross these crossings?

A. There used to be an old stockyards which stand north of the west of the present stockyards that is now in operation and is approached over the same highway by wagons hauling feed. I understand too that some ammunition concern has a storage plant by the lake.

Mr. Thatcher: That you know nothing personally about?
A. No.
Mr. Rich: But you know there is a feeding station north and west of the stockyards?
A. Yes.
Q. And the stockyards are located north of your plant?
49 A. Yes.
Q. And in order to get there one has to cross all these tracks and get there that way?
A. They do.
Q. Now do you know the proportion of employees, as to whether the most of them reside in Salt Lake or in the vicinity of the plant to the north in Bountiful and Davis county?
A. I don't know.
Q. Do you know considerable of the employees reside in Salt Lake City?
A. I know quite a few of them do.
Q. And do you know considerable reside north of the plant?
A. Yes.
Q. Do you know if the employees living north of the plant have a way of getting to the plant besides this road way we are talking about?
A. There is a road to the north,—I would estimate it about three-fourths of a mile—that I believe is used because I have seen employees walk down from that direction, but in taking that road they must also cross the D. & R. G. and Short Line tracks.

Mr. Loofbourow: Private property?
A. I think so.

Mr. Thatcher:

Q. Does it belong to the Cudahy Packing Company?
A. No.

Mr. Rich: Had the deceased reported for duty on the ninth of August, 1921 when would his work have started Mr. Hoffman?
A. 7:30 a. m.
Q. And as I understand it he had not reported yet to work?
A. No.
Q. Had he reached the real estate or premises of the Cudahy Packing Company when he was killed?
A. No sir.
Q. When did he quit work the day before?
A. About 3:30 or 40.
Q. P. M. of Au st eighth?
A. Yes, the day before.
Q. So that not only was he not upon the premises August 9th at all but he had not been on the premises of the Cudahy Packing Company for over fifteen hours before he was killed?
A. He had not.
Q. And the last time he was upon the premises was about 3:39.

A. 3:39 I believe was it.
Q. What system have you as to showing what men come to work or leave work?
A. We have a time clock system to punch out and in.
Q. And the records show what as to Mr. Parramore?
A. That he left at 3:39 p. m.
Q. As I understand it then the deceased on the ninth of August, 1921 was not upon the premises or real estate of any kind of the Cudahy Packing Company?
A. Not to my knowledge.
Q. He had not yet reached it?
A. No.
Q. He had not yet reported for duty?
A. No sir.
Q. Had he arrived at the place of any duty for your company?
A. No sir.
Q. For over fifteen hours prior to the time he was killed had he done any work for or in the interest of your company?
A. No.

Mr. Loofbourow: It is conceded he did not.

Mr. Rich: Had he done any work at all for your company when he was killed?
A. No sir.
Q. Was he injured from any cause which might in any way have been contemplated as part of his duties or employment?

Mr. Thatcher: That is a conclusion. It cannot be answered.
Mr. Rich: You refuse to let the witness answer that question?
Mr. Thatcher: Yes.
Mr. Rich: We offer to show that this man was not injured from any cause which might have been contemplated from his employment.

Mr. Rich:

Q. Had the hour arrived when he was to work or report for work to the company when he was killed?
A. No.
Q. I think that will be all for Mr. Hoffman except we would like to offer this map in evidence. It does not contain a diagram of the Bamberger crossing but does in lead pencil show the Short Line and shows the distance between the Rio Grande and Short Line and beyond there it is of scale.

Mr. Thatcher: Are there any objections Mr. Loofbourow?
Mr. Loofbourow: I don't think so.
Mr. Thatcher: It may be accepted and marked Exhibit "A."

Mr. Rich: Mr. Hoffman at the time Mr. Parramore was killed by the engine of the D. & R. G. was the Rio Grande Railroad Company or that engine engaged in any business whatsoever directly or indirectly for or on behalf of the Cudahy Packing Company?

A. It was not.

Mr. Thatcher: What was the contract of hire between the
51 Cudahy Packing — and Mr. Parramore?

A. He worked on a weekly salary.

Q. Then other than for the accident he would have been in your employ during that day, so far as you know?

A. So far as I know.

Q. Do you know of your own knowledge the hour of the accident?

A. No sir.

Examination.

By Mr. Loofbourow:

Q. Mr. Hoffman, now the right of way fence isn't marked south of this county road. Would it be an extension of this line running from this fence? (Referring to map—Exhibit "A.") These switch tracks are on your property?

A. I don't know whether that is our property or the D. & R. G.

Mr. Rich:

Q. You mean the two switch tracks west of the main line?

Mr. Loofbourow: Isn't there a right of way fence west of the main line between the two switch tracks? I notice you have marked here south of the county road, stateroom, box shook, etc., etc.

A. Since my time these sheds have been used only as a garage for employes' cars.

Q. At the time of this accident did you see the automobile after it was thrown away from the track?

A. I did.

Q. How near was it from the right of way fence?

A. If I remember correctly it was partly through the right of way fence.

Q. So it was partly on the right of way of the railroad and partly on the premises of the Cudahy Packing Company?

A. I didn't examine where the car lay except as I went by in my own machine it was lying there. As I remember, it was partly through that right of way fence. It had been jammed against the fence.

Q. Is the Cudahy Packing Company in control of that land just west of the fence on the south side of the county road?

A. Part of it;—not all of it.

Q. Well the land immediately west of the right of way fence?

A. I don't think so.

Q. Why?

A. Because I don't know just where our land is.

Q. These tracks run through part of your shed, part of your plant north of that county road?

A. They do that.

Q. And that part of your plant is on your property?

2 A. Yes but whether this other part is I don't know.

Q. The records of Davis County show the Cudahy plant wn that land just west of the county road and I ask that the company introduce their records. Because this automobile was thrown hru that fence, which was the fence surrounding the Cudahy plant nd I think it is important.

Mr. Thatcher: Mr. Rich can it be agreed that that property is nder the control of the Cudahy Packing plant.

Mr. Rich: I don't know just what that is. I know the Cudahy ompany does own real estate south of the county road but whether runs up to the right of way of the D. & R. G. I do not know. There is a right of way to the east which is open for property owners arther south.

Mr. Loofbourow: The Rio Grande Western acquired the right of ay north of this road by fee. South of this they have only a right f way and do not own the fee. The fee there may be in the Cudahy Packing Company.

Mr. Rich: No it is not. The Cudahy acquired its property from he old Inter-Mountain plant.

Mr. Loofbourow: This is true isn't it Mr. Hoffman, that the right f way fence of the Rio Grande is much nearer the main line track outh of the county road than north of the county road?

A. I don't know. I couldn't say definitely without taking a look t it.

Q. Now there is a right of way fence along the west side of the). & R. G. tracks, south of the road, then a fence running west along he south side joining that at the intersection of the right of way ence and the highway, isn't there?

A. There is no fence on the south side of the road passing our lant.

Q. Between the county road and your property marked "storeouse," etc.

A. There is a fence between the buildings and the D. & R. G. racks which is the D. & R. G. right of way fence.

Q. And that is the fence between these buildings and the main ine?

A. There is property and tracks of course between that.

Q. Yes but there is no fence between these tracks and these buildngs?

A. No.

Q Another thing. Is there anyone here who could testify where Ir. Parramore lay with respect to this automobile after the accident?

A. Mr. Westerman.

3 Q. What way was the automobile facing?

Mr. Westerman: South, and Mr. Parramore lay in a pool of lood about two yards south of the auto.

Q. Where with respect to the right way fence?

A. He lay in the railroad company's property.

Q. How far in?

A. I don't know exactly; I never measured it but it was over three feet.

Mr. Rich: I think we better have Mr. Westerman sworn:

Mr. WILLIAM WESTERMAN was called to the stand and duly sworn:

Examination.

By Mr. Locfbourow:

Q. Your name is what?
A. William Westerman.
Q. Are you connected with the Cudahy Packing Company?
A. Yes as superintendent.
Q. You have been with that company for sometime?
A. Yes.
Q. Were you with the company on the ninth day of August at the time of this injury to Mr. Parramore?
A. Yes.
Q. Were you there on the premises at the time of the accident?
A. Yes.
Q. Did you go out and see Mr. Parramore as he lay immediately after the accident?
A. Yes.
Q. Where was he with respect to the right of way fence which separates the main line of the Rio Grande Western from the premises of the Cudahy Packing Company?
A. He was three feet inside the railroad company's barbed wire fence.
Q. Where was the automobile with respect to the fence?
A. About six feet north of Mr. Parramore.
Q. With respect to the fence?
A. It was inside.
Q. Any of it through the fence?
A. No.
Q. How near was it to the fence?
A. It was close.
Q. Was it six inches or two feet?
A. In fact I prevented the fellows from touching it.
Q. How near was it from the fence?
A. More than six inches.
Q. And Mr. Parramore,—the nearest part of his body was how near to that line?
54 A. About three feet.

Examination.

By Mr. Rich:

Q. Then as I understand, both Mr. Parramore and the auto were east of the railroad right of way fence?
A. Yes.

Q. And they were both south of the county road?
A. Yes.
Q. And the plant where Mr. Parramore was working was north of the county highway?
A. Yes. In fact it looked as though Mr. Parramore had hit one of the sticks and flew back.
Loofbourow: You mean he struck one of the posts and was thrown back?
A. Yes. It looked like it.
Q. How long have you been with this plant?
A. Five years.
Q. And does the Cudahy Packing Company exercise any control of that property west of the right of way fence south of the main road?
A. I couldn't say.
Q. They had buildings in that enclosure that they use?
A. Yes.
Q. They go and come freely?
A. Yes, I use the garage myself.
Mr. Rich: You didn't see the accident?
A. No it had just happened when I got there.
Q. Mr. Parramore was already on the ground?
A. Yes.
Q. You didn't see Mr. Paramore thrown against the post and thrown back?
A. No it just looked that way to me.

Mr. Thatcher: Have you any further evidence to submit Mr. Rich?
Mr. Rich: That's all.
Mr. Thatcher: Have you Mr. Loofbourow?
Mr. Loofbourow: No I think that's all. I would like to file a brief in this case.
Mr. Thatcher: It is understood Judge Loofbourow will submit a brief within ten days and Mr. Rich will have ten days from receipt to submit an answer.
The case will be submitted.

End.

55 This is to certify that I am the duly qualified and acting official Reporter of The Industrial Commission of Utah and as such officer I reported stenographically the hearing in the matters aforesaid which came on regularly before the said Commission November 18th, A. D., 1921; that the foregoing thirty-five pages contain a full, true and correct transcript of my said stenographic notes and contain all the testimony offered by the respective parties and received by the Commission, the objections of counsel and the rulings thereon, and all proceedings had in the matters aforesaid before said Commission and on the dates in this record indicated.

B. P. SPRY,
Reporter.

56 The Industrial Commission of Utah.

Claim #547.

MARY ANN PARRAMORE

vs.

CUDAHY PACKING CO. OF NEBRASKA.

I move that Defendant's Petition for Re-hearing in above named case be denied and all interested parties so notified.

WM. M. KNEER,
Commissioner.

Roll Call.

Voting.	Aye.	Nay.
Mr. Knerr	√	..
Mr. McShane	√	..
Mr. Chairman	√	..
Result	3	..

Passed by The Industrial Commission of Utah, Salt Lake City, Utah, January 17th, 1922.

P. A. THATCHER,
Chairman.

CAROLYN I. SMITH,
[SEAL.] *Secretary.*

57 Copy.

Before the Industrial Commission of Utah.

Claim No. 547.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, Applicant,

vs.

CUDAHY PACKING CO. OF NEBRASKA, Defendant.

Petition for Rehearing and Modification of Decree.

Comes now the said Cudahy Packing Company, defendant in said matter, and being dissatisfied with the decision of the Honorable Commission in said matter made and entered on or about the 17th day of December, 1921, and believing that the said decision is against law and not made and based upon the facts as they exist in

said matter and as brought out or proved by the evidence, petitions the Honorable Industrial Commission to grant a rehearing in said matter and that the said decision be modified and set aside for the reasons and upon the grounds as hereinafter set forth and as shown by the undisputed evidence in said case to-wit:

(1) That the said deceased was not killed or injured by reason of an accident arising out of or in the course of his employment by the said defendant.

(2) That at the time and place of the injuries and accident to the said deceased, the deceased was not upon the premises of defendant.

58 (3) That at the time and place of the death and injuries to the said deceased, he was not engaged in any work or performing any duties for or on behalf or in the interest of the said defendant.

(4) That at the time and place of the said injuries and death of the deceased, he was not working or doing anything whatsoever in line with his employment.

(5) That at the time of the death of said deceased and his injuries, the deceased had not been engaged in any work or labor for the defendant since the previous day.

(6) That at the time and place of said injuries and death of the deceased, he had not even been upon the premises of the defendant for more than fifteen hours, and on the previous day.

(7) That the said deceased had not reached the place of his employment or even the premises of the said defendant at the time he received his injuries and died.

(8) That at the time said deceased met with his injuries and died, he not only had not reached the premises of his employer but the time for the commencement of his employment had not yet arrived.

(9) That the said deceased met with an accident which resulted in his death while he was a member of the general public and not upon the premises of the defendant nor doing any work for the defendant, nor performing any labor in line with his employment, and before the time of his employment had arrived, and while he was at a place over, upon, or concerning which, the said defendant had no jurisdiction, authority or control, either as to the person of the deceased or as to the place where the deceased met with his injuries which resulted in his death.

(10) That the said deceased was killed by reason of an ac-
59 cident while a member of the public upon a generally traveled and public road.

(11) That the deceased was killed upon a public railroad crossing, and upon the right-of-way of a railroad by being run down or in

collision with an engine of a railroad company which was not engaged in, or performing any work for or on behalf of the said defendant.

(12) That the said deceased went to work for the plaintiff by his own method of transportation and did not, prior to the accident which resulted in his death, reach the premises of the said defendant, the employer, by any means of transportation provided or recommended by the defendant; but chose his own means of getting to his place of work and at his own time, and was injured while going to work but before he reached the place of his employment or even the premises of his employer by conveyance of his own convenience, and at his own selection, over or concerning which the defendant had no control, authority or jurisdiction, nor had made any recommendations thereto in any manner.

(13) That the deceased resided a distance of six or seven miles from the plant of the defendant which was the place of the deceased's previous employment, and that in going from his place of residence to his place of employment, he chose his own time and own manner or method of conveyance; and from the place of his residence to the plant of the defendant company within said distance of six or seven miles, the deceased was exposed to many dangers, risks and hazards upon the public thoroughfares and streets of Salt Lake City and of Davis County, Utah, as any member of the public is so exposed in traveling along said streets and thoroughfares from many railroad crossings, interurban crossings and street car crossings or from collisions with vehicles upon said streets and thoroughfares over or upon, or concerning which the said defendant had and has no supervision, jurisdiction or control, and concerning or in relation to which, the said defendant can have no authority, jurisdiction or control.

(14) That the said defendant has no right or authority to establish or maintain any safety signals or safety appliances over and along the streets of Salt Lake City and the thoroughfares and public roads of Davis County, over and along which the said deceased was compelled to travel in leaving his place of residence in Salt Lake City to arrive at the place of his work in the plant of the defendant at North Salt Lake, Utah.

(15) That there is and was no duty on the part of the said defendant to make the streets of Salt Lake City, the public thoroughfares of Davis County and the public roads and public railroad crossings over and along which the said deceased was compelled to travel or go in reaching his place of work from the place of his residence, safe.

(16) That there is and was no duty on the part of the defendant to protect said deceased from accidents or injuries after he quit one day's work and before he came to work on the following day from causes over which the defendant had no control and while the deceased or any other employee was not engaged in any service whatsoever in line with his employment.

(17) That the said defendant was not an insurer of the safety of the said deceased from the time he left his home in Salt Lake City until he arrived at the packing plant of the defendant in North Salt Lake, Utah, a distance of six or seven miles and while the deceased was a member of the general public performing no
61 work or labor for or in the interest of the defendant, nor in the course of his employment.

(18) That the employment of the deceased with the defendant was that of stationary engineer in charge of the engine room and engine within the packing plant of the defendant at North Salt Lake, Utah, and his employment had to do or concerned nothing else; and that an accident which resulted in the death of the deceased while a member of the public upon a public thoroughfare and at a public railroad crossing before the premises of the defendant were reached, does not arise out of or does it occur in the course of the deceased's employment; that the accident which resulted in the death of the deceased, in no manner, directly or indirectly had anything to do whatsoever with the employment of the deceased with the defendant.

(19) That the industry and business of the defendant was not in any manner concerned or effected by anything which the deceased was doing at the time he received the injuries which resulted in his death. In other words—so far as this defendant is concerned, the death of the deceased was not an industrial accident, and there is no fact or circumstance in connection with the accident which resulted in the death of the deceased which can be chargeable in any manner to the business or industry of the defendant or the work or employment of the deceased with the defendant.

(20) That the said deceased was not employed by the defendant until he at least should reach the premises of the defendant to report for work; that the deceased's employment with the defendant could not commence until the premises of the defendant were reached, and the deceased was killed on a public highway and at a public railway crossing on the main right-of-way of a railroad under facts and circumstances in which the defendant was not concerned, and before the deceased reached the defendant's premises, and before the time of his employment should commence, at a place more than 100
62 feet distant from the gate leading into the defendant's inclosure containing its packing plant, and which gate was more than 70 feet distant from the defendant's packing plant, and the place of the deceased's employment being within the packing plant as stationary engineer; that the employment of the deceased by the defendant was not continuous during the whole twenty-four hours of a day but was shift employment to commence at a certain time on one day and to continue until a certain time and while the deceased was within the packing plant of the defendant; that nothing could occur to the deceased in the course of his employment unless it was within the time of his work, that is, from the time his work commenced on a day until the time his work ceased for that day; that the deceased was killed before his work for that day commenced and

before he had arrived at the place of his employment or before he had reached even the real estate premises of the employer.

(21) Under the facts and circumstances of the deceased's accident and death, the employment of the deceased by the defendant as stationary engineer, had nothing to do whatsoever with the accident or death because the employment had not commenced and the place of work had not been reached, and the time of the employment had not yet arrived. And there was nothing absolutely in connection with the accident or death of the deceased which arose out of or in the course of his employment.

(22) That there was no causal connection or relationship between the accident and the manner of it resulting in the death of the deceased and the employment, work, or duties of the deceased, or contemplated by the employment of the deceased; and that the accident and death of the deceased and the employment are separate and apart and without relationship, cause or effect.

63 (23) The finding of the Honorable Commission "that the plant of the Cudahy Packing Co. is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant" is a finding by the Commission upon which there is no evidence in the record nor any given or taken at the hearing in said matter; that there is no evidence that the public crossing on a public county road of the main line of the Denver & Rio Grand- Railroad where the accident to the deceased occurred, and where he died, was or could be, by any logical deduction, connected in any manner with the place of the location of the plant of the Cudahy Packing Co. within which the deceased had been an employee as a stationary engineer. The defendant particularly calls attention of the Commission to the fact that if the Cudahy Packing Company is dependent upon shipping facilities furnished by railroads, it does not and cannot appear that a public crossing on a public highway of the main line of a railroad has anything to do directly or indirectly with the fact that it may be convenient for the Cudahy Packing Company to have covenient railroad facilities. The Cudahy Packing Company did not use the main line of the Denver & Rio Grande Railroad at the place of the public crossing—of the public road—of the public highway. Any railroad facilities or switches which may have been used or found convenient for the packing plant or business of the defendant, in no wise, has relation to a public crossing of the main line of the railroad company. The accident did not happen upon any switch or upon any railroad crossing provided for the business or convenience of the Cudahy Packing Company. If the acci-
64 dent had happened upon a switch which furnished the Cudahy company railroad facilities and where the Cudahy company was exercising or using those facilities, and on the premises of the company, an altogether different set of facts would exist; but the place of the accident had no more to do with the Cudahy plant or the railroad facilities of the plant than if the deceased had been hit

by a motorcycle in front of his own dooryard seven miles distant from the plant, and an hour before the time of the deceased's work commenced if he had chosen to walk to work instead of using some conveyance.

(24) It is not contemplated by the Workmen's Compensation Act that an employer shall pay compensation to employees when they are off work and members of the general public, when the employers have no authority, power, or control or jurisdiction over what they are doing or where they may be and when the employee is not upon the premises of the employer nor doing anything in line with his employment; and in the instant case, the accident and death of the deceased was not from any industrial accident with which the Cudahy Packing Co. was concerned, and the accident to the deceased did not arise out of nor occur in the course of anything whatsoever in line with or connected with or growing out of any employment or work, labor or duties of the deceased in the interest or on behalf of the defendant.

Wherefore, the defendant prays that the Honorable Commission will grant a re-hearing in said matter, that the decision of the Honorable Commission be set aside, and that such a decision in the premises may be found and made by the Commission as may con-
65 form to law and as may be agreeable to the facts.

BOOTH, LEE, BADGER & RICH,
Attorneys for Defendant.

Dated, this 7th day of January, A. D. 1922.

Jan. 9, '22.
Copy mailed to F. C. Loofbourow, Attorney for Applicant.
B. L. RICH.

66 Copy.

Before the Industrial Commission of Utah.

Claim No. 547.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, Applicant,

vs.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation, Defendant.

Decision.

Mary Ann Parramore, on the twenty-fifth day of October, 1921, made application to the Commission for compensation for the death of her husband, Joseph Parramore, alleging that on the ninth day

of August, 1921, her husband was fatally injured by reason of an accident arising out of or in the course of his employment, while employed by the Cudahy Packing Co. of Nebraska, alleging that on said date Mr. Parramore, while riding in an automobile with two other employees were crossing the Denver & Rio Grande Western Railroad tracks at the plant, was struck by a Denver & Rio Grande Western Railroad engine and was instantly killed. The applicant alleges that on said date she was the lawful wife, and that Owen Parramore, age 20, Ruth Parramore, age 17, and Luella Parramore, age 15, were the minor children, of Joseph Parramore, and were living with him and dependent upon him for their maintenance and support.

Pursuant to notice and order of The Industrial Commission of Utah, this cause came on regularly to be heard on the eight-
67 eenth day of November, 1921, at the State Capitol, Salt Lake City, Utah. The applicant was present in person and was represented by Judge F. C. Loofbourow; the defendant being represented by Booth, Lee, Badger & Rich, attorneys, Mr. Benjamin L. Rich present.

Findings.

In accordance with the stipulations entered into, and the evidence submittted, the Commission finds the following to be the facts:

I.

That Joseph Parramore on the ninth day of August, 1921, was fatally injured by accident at or near their plant located about six miles north of Salt Lake City, Utah, while employed by the Cudahy Packing Co. of Nebraska; that on said date the Cudahy Packing Company had in their employ in the State of Utah three or more workmen; that the Cudahy Packing Co. of Nebraska is known and designated as a self-insurer, paying compensation direct to its injured employees or their dependents; that on said date three workmen, including Mr. Parramore, all of whom lived in Salt Lake City, were traveling in an automobile owned by one of the workmen, approaching the plant where they were employed; that while crossing the main line tracks of the Denver & Rio Grande Western Railroad Company, which tracks were alongside the land upon which is located the plant of the Cudahy Packing Company, the automobile in which they were riding was struck by an engine of the railroad company and Joseph Parramore thrown against a post in the right of way fence, which fence also enclosed the property of the Cudahy Packing Company and was instantly killed; that within half a mile of the plant of the Cudahy Packing Company, where Mr.
68 Parramore was employed, it was necessary that Mr. Parramore pass over the main line tracks of the Bamberger Electric Railway Company and the main tracks of the Oregon Short Line Railroad Company, and the main line tracks of the Denver & Rio Grande Western Railroad Company, and three side tracks and trans-

fer tracks between these various lines of railroad; that the Cudahy Packing Company furnished its employees no method of travel or conveyance in coming to or leaving the plant and most of the employees of the company lived in such localities that it was necessary that they should travel, to and from their work, the road which crossed the railroad tracks above mentioned; that the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant; that the death of Mr. Parramore occurred about seven minutes before the time at which he was to commence work; that the Cudahy Packing Company does not furnish at its plant either board or lodging; that there are no public conveyances that could carry employees directly to the plant; that employees who went to their work by street cars or by the Bamberger Electric Railway must cross the railroad tracks above mentioned, either on foot or by private conveyance; that Mr. Parramore at the time he was killed was using the most direct and practicable route to the plant of the Cudahy Packing Company and the one ordinarily traveled by the majority of the employees, and by all the employees residing in Salt Lake City.

69 II.

That the applicant was duly appointed guardian of the estate and persons of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of the decedent, in the District Court of the State of Utah, in and for Salt Lake County, on the sixteenth day of December, 1921; that on said date the said Court made an order authorizing the applicant as guardian to take such action as is necessary to join said minors in the application of Mary Ann Parramore individually for compensation; also that the said District Court made and entered an order authorizing the applicant, as guardian of said minors, to assign to the Cudahy Packing Co. of Nebraska, a corporation, all claim that the said minors have against the Denver & Rio Grande Western Railroad Company for damages for causing the death of Joseph Parramore, father of said minors; that a certified copy of said orders are filed with The Industrial Commission of Utah and made part of the record in this case; that the applicant as such guardian asks that said Owen Parramore, Ruth Parramore and Luella Parramore be joined in this application for compensation and that they be allowed to participate in whatever order is made in this matter.

III.

That on the ninth day of August, 1921, Mary Ann Parramore was the lawful wife, and Owen Parramore, age 20, Ruth Parramore, age 17, and Luella Parramore, age 15, were the minor children, of Joseph Parramore, and were living with him and wholly dependent upon him for their maintenance and support.

IV.

That on August 9, 1921, Joseph Parramore was paid a wage of $35.00 per week, working seven days per week.

V.

That no compensation has been paid to any person or persons.

70 VI.

That Judge F. C. Loofbourow was the attorney representing the applicant and appeared before the Commission at the hearing in her behalf.

Conclusions.

In view of the foregoing findings the Commission concludes that Joseph Parramore, on the ninth day of August, 1921, was killed by accident arising out of or in the course of his employment at a point approximately six miles from Salt Lake City and near the plant of the Cudahy Packing Co. of Nebraska, an employer subject to the provisions of the Workmen's Compensation Act; that Mary Ann Parramore was the lawful wife, and Owen Parramore, Ruth Parramore and Luella Parramore the minor children, of the said Joseph Parramore, and were living with him and wholly dependent upon him for their support and maintenance on said date, therefore the Cudahy Packing Co. of Nebraska should pay to Mary Ann Parramore, as widow, and as guardian of the above named minor children compensation in the sum of Sixteen Dollars per week, beginning on the ninth day of August, 1921, for not to exceed a period of three hundred twelve weeks, for the sole benefit of herself and minor children, all accrued payments to date to be paid in a lump sum; also to pay funeral expense incurred by reason of the burial of deceden according to law; that a reasonable attorney's fee should be paid to attorney F. C. Loofbourow by the Cudahy Packing Co. of Nebrask and deducted from the compensation awarded to the applicant, in the sum of One Hundred Thirty Five Dollars.

71 Wherefore, it is ordered that compensation be, and the same is hereby awarded to be paid by the Cudahy Packing Co. of Nebraska to Mary Ann Parramore, as the widow of the deceased, and as guardian of Owen Parramore, Ruth Parramore and Luella Parramore, the minor children of Joseph Parramore, in the sum of Sixteen Dollars per week, beginning August 9, 1921, not to exceed a period of three hundred twelve weeks, all accrued payments to date to be paid in a lump sum; also to pay reasonable funeral expense according to law.

It is further ordered that the Cudahy Packing Co. of Nebrask pay to F. C. Loofbourow, attorney, the sum of $135.00 as attorney

fee, said amount to be deducted from the compensation awarded the applicant.

December 17, 1921.

THE INDUSTRIAL COMMISSION
OF UTAH.
WM. M. KNERR,
O. F. McSHANE,
P. A. THATCHER,
Commissioners.

I hereby certify the above to be a true and correct copy of decision rendered by The Industrial Commission of Utah on the 17th day of Dec., 1921.

[SEAL.] CAROLYN I. SMITH,
Secy.

72 The Industrial Commission of Utah,

State Capitol,

Salt Lake City, Utah.

#547.

MARY ANN PARRAMORE, Widow; OWEN PARRAMORE (20), RUTH PARRAMORE (17), Luella Parramore (15), Minor Children of Joseph Parramore, Deceased, Applicants,

vs.

THE CUDAHY PACKING CO. OF NEBRASKA, Defendant.

Petition.

Comes now Mary Ann Parramore, as Guardian of the estate and person of each of the above named minors, Owen Parramore, Ruth Parramore and Luella Parramore and represents to the Court:

1. That this Petitioner was duly appointed Guardian of the estate and person of the above mentioned minors in the District Court of the State of Utah, in and for Salt Lake County on the 16th day of December, 1921, and that a certified copy of said letters of Administration is attached hereto and marked exhibit "A."

2. That on said 16th day of December, 1921, said Court, in said Guardianship proceedings, made an Order authorizing this Petitioner as such Guardian to take such action as is necessary to join said minors in the application of Mary Ann Parramore, individually, for compensation in the above entitled proceeding and that a certified copy of said Order is hereto attached and marked Exhibit "B."

3. That said Court on the 16th day of December, 1921, made and entered an Order authorizing this Petitioner as Guardian of said minors to assign to the Cudahy Packing Company of Nebraska, a corporation, all claims which said minors have against the
73 Denver & Rio Grande Western Railroad Company for damages for causing the death of Joseph Parramore, father of said minors. That a copy of said Order is hereto attached and marked Exhibit "B."

Wherefore, this Petitioner, as such Guardian, asks that said Owen Parramore, Ruth Parramore and Luella Parramore be joined in this Application #547 for compensation and that they be allowed to participate in whatever Order is made in this matter.

MARY ANN PARRAMORE,
Guardian of Owen Parramore, Ruth Parramore, and Luella Parramore, Petitioner Herein.

STATE OF UTAH,
County of Salt Lake, ss:

Mary Ann Parramore, being first duly sworn, deposes and says: I am the Guardian of the above named minors and as such Guardian of said minors, I have signed the foregoing Petition; that I have heard said Petititon read and know the contents thereof and the statements made therein are true.

MARY ANN PARRAMORE.

Subscribed and sworn to before me, this 16th day of December, A. D. 1921.

FREDERICK C. LOOFBOUROW, [SEAL.]
Notary Public.

Residing at Salt Lake City, Utah.

74 EXHIBIT "A."

In the District Court, Probate Division in and for Salt Lake County, State of Utah.

In the Matter of the Estate and Guardianship of OWEN PARRAMORE, RUTH PARRAMORE, and LUELLA PARRAMORE, Minors.

Letters of Guardianship.

Mary Ann Parramore is hereby appointed Guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, Minors.

By Order of the Court.

Witness: Clarence Cowan, Clerk of said Court, with the Seal thereof affixed, this 16th day of December, A. D., 1921.

[SEAL.] CLARENCE COWAN,
Clerk,
By L. P. PALMER,
Deputy Clerk.

STATE OF UTAH,
County of Salt Lake, ss:

Before me, Clarence Cowan, Clerk of the above District Court in and for Salt Lake County, on this 16th day of December, A. D. 1921, personally appeared Mary Ann Parramore who being duly sworn for herself says that she will perform, according to law, the duties of guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minors.

MARY ANN PARRAMORE.

Subscribed and sworn to before me, the day and year aforesaid.

[SEAL.] CLARENCE COWAN,
Clerk,
By L. P. PALMER,
Deputy Clerk.

75 STATE OF UTAH,
County of Salt Lake, ss:

I, Clarence Cowan, Clerk of the Third Judicial District Court of the State of Utah, in and for Salt Lake County, do hereby certify that the foregoing is a full, true and correct copy of the original letters of guardianship in the matter of the estate and guardianship of Owen Parramore, et al., minors, No. 11427, as appears of record and file in my office.

Witness my hand and the Seal of the Court, at Salt Lake City, this 16th day of December, A. D., 1921.

[SEAL.] CLARENCE COWAN,
Clerk,
By LILLIAN SPERRY,
Deputy Clerk.

76 EXHIBIT "B."

In the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County.

Application of MARY ANN PARRAMORE to be Appointed Guardian of the Person and Property of Owen Parramore, Ruth Parramore, and Luella Parramore, Minors.

Order.

The application of Mary Ann Parramore, Guardian of the estate and person of the following minors, to-wit:

Owen Parramore, Ruth Parramore and Luella Parramore, having come on for hearing this 16th day of December, 1921, the Court finds that it is for the best interest of said minors that they join with Mary Ann Parramore, their mother, in that certain application #547 for compensation now pending before the Industrial Commission of Utah and that all claim for damages against the Denver & Rio Grande Western Railroad Company, growing out of the accidental death of Joseph Parramore, the father of said minors, be assigned to the Cudahy Packing Company of Nebraska, a corporation.

Now, therefore, it is ordered, adjudged and decreed that the said Mary Ann Parramore, as Guardian of Owen Parramore, Ruth Parramore and Luella Parramore, minors, is hereby authorized to take such steps as are necessary to have said minors join in the Petition #547 to the Industrial Commission of Utah by the said Mary Ann Parramore for compensation so that said minors will receive the benefit of whatever order for compensation is made in said proceeding and that said Mary Ann Parramore, as such Guardian, shall assign and set over to the Cudahy Packing Company of Nebraska, a corporation, all right, title, interest and claim, which said children may have in any action for damages against the Denver & Rio Grande Western Railroad Company growing out of the killing of the said Joseph Parramore by a locomotive of said Railroad Company.

77 Dated at Salt Lake City, Utah, this 16th day of December, A. D., 1921.

ARTHUR R. BARNES,
Judge.

Attest:
[SEAL.] CLARENCE COWAN,
Clerk,
By L. P. PALMER,
Deputy Clerk.

Endorsed: No. 11427. District Court, Probate Division, Third Judicial District, County of Salt Lake, State of Utah. In the matter of the Estate and Guardianship of Owen Parramore, Ruth Parramore

and Luella Parramore, et al., minors. Filed in the Clerk's office, Salt Lake County, Utah, Dec. 16, 1921, Clarence Cowan, Clerk 3rd District Court. By L. P. Palmer, Deputy Clerk.

78 STATE OF UTAH,
County of Salt Lake, ss:

I, Clarence Cowan, Clerk of the Third Judicial District Court in the State of Utah, in and for Salt Lake County, do hereby certify that the foregoing is a full, true and correct copy of the original order in the matter of the estates and guardianship of Owen Parramore, et al., minors, No. 11427, as appears of record and file in my office.

Witness my hand and the Seal of Said Court, at Salt Lake City, this 16th day of December, A. D. 1921.

CLARENCE COWAN,
Clerk,

[SEAL.]

By LILLIAN SPERRY,
Deputy Clerk.

79 *Statement showing number of trains passing over public roadway which leads West from the Salt Lake-Ogden Paved highway and which trains crossed this roadway in a northerly and southerly direction (the roadway travelling an easterly and westerly direction) all of these trains crossing the roadway within the boundaries of the Salt Lake-Ogden Paved highway on the east and the plant of The Cudahy Packing Company on the west—July 30th to August 10th, 1921, inclusive.*

Date. 1921.	Bamberger Electric R. R.			O. S. L. R. R.			D. & R. G. R. R.			All lines.		
	Pass.	Fgt.	Total.	Pass.	Fgt.	Total.	Pass.	Fgt.	Total.	Pass.	Fgt.	Total.
July 30.....	39	4	43	23	11	34	4	4	8	66	19	85
" 31.....	39	2	41	22	10	32	4	2	6	65	14	79
Aug. 1.....	39	4	43	23	14	37	4	4	8	66	22	88
" 2.....	39	2	41	23	16	39	4	2	6	66	20	86
" 3.....	39	4	43	23	13	36	4	5	9	66	22	88
" 4.....	39	4	43	22	13	35	2	3	5	63	20	83
" 5.....	39	4	43	22	14	36	3	4	7	64	22	86
" 6.....	41	2	43	22	14	36	7	2	9	70	18	88
" 7.....	39	0	39	22	13	35	5	2	7	66	15	81
" 8.....	39	4	43	23	16	39	4	2	6	66	22	88
" 9.....	39	4	43	23	15	38	4	2	6	66	21	87
" 10.....	39	4	43	22	14	36	4	4	8	65	22	87
Total	470	38	508	270	163	433	49	36	85	789	237	1,026

In 12 days a total of 1,026 trains.
In 1 day 86 trains.
In 1 hour 4 trains.
1 train every 15 minutes in each 24 hours.

80 Form No. C12.

The Industrial Commission of Utah,

State Capitol,

Salt Lake City, Utah.

NOTE.—Under Chapter 100, Laws of Utah, 1917—Act creating The Industrial Commission of Utah, the applicant need only state the general nature of the claim in controversy. Full particulars should be given, but an application will not be held invalid by reason of any defect. This form is intended to assist the applicant and to suggest all necessary particulars. Either party may be represented in person, by attorney or other agent. When application has been filled out and signed by the applicant, the original, together with one copy for each party to the controversy, should be filed with or mailed to The Industrial Commission of Utah, Salt Lake City, Utah. This application must be filled out in every possible detail:

Claim No. 547.

MARY ANN PARRAMORE, Widow, OWEN PARRAMORE (20), RUTH Parramore (17), Luella Parramore (15), Minor Children of Joseph Parramore, Dec., Applicants,

vs.

THE CUDAHY PACKING CO. OF NEBRASKA, Defendant.

Application for Adjustment of Claim.

The petition of the above-named applicant- respectfully shows to your Honorable Commission as follows:

I.

That on the ninth day of August 1921, Joseph Parramore was
Name of person injured.
killed by reason of an accident arising out of or in the course of his
Killed or injured.
employment by the above-named The Cudahy Packing Co. of
Name of employer.
Nebraska.

That your petitioner- *is* the widow and minor children of deceased
If applicant is a dependent, state relationship.
person injured.

II.

That a question has arisen with respect to the compensation to be paid therefor and the general nature of the claim in controversy is as follows, to-wit:

Give the date that employer refused to pay the compensation demanded, and state briefly the exact matter in dispute, as for example:

(A) Employer denies liability for compensation; or,
(B) A dispute has arisen concerning the amount or duration of the compensation payable.

Employer denies liability for compensation.

80½ III.

That the following is a statement of particulars relative to this application:

1. Name of injured employee. Joseph Parramore (deceased).
Address. 213 North Seventh West, Salt Lake City, Utah.
Occupation. Stationary engineer. Class No. —.
Age. 59.

2. Name of employer. The Cudahy Packing Co. of Nebraska.
Address. North Salt Lake, Utah.
Place of business. Same.
Business address. ——.

3. Name and address of all other parties to this application and reason why each party is joined. ——.
Name and address of employer's insurance carrier, if known. Self-insurer.

4. Place of accident. D. & R. G. R. R. crossing by Cudahy Plant, North Salt Lake.

5. Nature of work on which injured person was engaged at time of accident. On his way to work (about 100 ft. from plant).

6. How did accident occur? (Describe in detail.) While riding in automobile with fellow employee and crossing railroad tracks at plant, was struck by D. & R. G. engine.

7. Nature of injury. (Describe in detail.) Killed instantly.

8. Has injured person fully recovered? If so, when? Killed.
When did injured person return to work? ——.

9. Particulars of disability, whether total or partial, and estimated duration thereof. If death resulted, so state, giving date of death. ——.

10. Was medical and surgical treatment required? No.
Was it furnished by employer? ——.
If not, did employer have opportunity to furnish it? ——.

11. Names and addresses of attending physicians. None that I know of.

12. Wages of employee at time of accident. (State whether paid by day, week, month, or year.) $35.00 *dollars* per week.

Exam Cat.

Form C-7.

The Industrial Commission of Utah—First Report of Injury.

Date of report, Aug. 13, 1921. Made out by C. Bills, Timekeeper. (Name) (Official position)

Employer's No..... (Do not fill in) Injury No..... (Do not fill in)

Do not Use these Spaces

Employer.

1. Employer's name, Cudahy Packing Co. of Nebraska. (Individual or firm name)
2. Office address, No. Salt Lake..... ....Davis. (Street and No.) (City or town) (County)
3. Nature of business, Meat Packers. (Goods produced, work done or kind of trade or transportation)
4. Insured under Compensation Act in Self Insurers Insurance Co.
5. Location of plant or place of work where injury occurred, No. Salt Lake, Utah. (Street and No.) (City or town) (County)

Time.

1. Date of injury, Aug. 9, 1921. (Month, day year) Hour of day 7:20 A. M. Hour shift commenced 7:30.
2. Disability began, Same time. (Month, day, year)

Injured person.

1. Name, J. Parramore. Address, 213 No. 7th West. (Street and No.) (City or town)
2. Age, 52. 3. Sex, M. 4. Married or Single M. 5. American, X. Foreign, ——. If foreign, give nationality ——.
6. Speak English { Good X. / Little. / Bad. } 7. Occupation when injured, Engineer.
8. In what department or branch of work employed? Mechanical.
9. If at mine, state whether underground, surface or shaft.....
10. If insured, state classification to which pay-roll is charged..... (Refer to insurance policy)
11. Was this regular occupation? Yes. If not, state regular occupation.....
12. Actual wage, or earnings, per week, $35 per week. 13. Working days per week, 7.

Cause.

1. Name of machine, tool or thing in connection with which injury occurred.....
2. If machine, indicate part.....
3. Was machine or part guarded?..... (Yes or No) 4. Was guard properly attached at time of injury?.. (Yes or No)
5. If not, who removed it?.....
6. By what kind of power driven?.....
7. Describe in full how injury occurred. A D. & R. G. engine struck a Ford touring car on the (Immediate cause of injury) public R. R. crossing located at No. Salt Lake.
8. What other causes or conditions helped to cause injury? Wind blowing from the South. (Poor light, rough or slippery floors, overcrowding, defective machinery, etc.)

Nature and Extent of Injury.

1. State exactly part of person injured and extent of injury. Killed.
2. Probable duration of disability. Killed.
3. Attending physicians..... (Name and address) Hospital ..... (Name)
4. Has injured person returned to work?..... (Yes or No.) If so, give date.....
5. Was injury fatal? Yes. (Yes or No)
6. Dependents (give names of dependents in fatal cases only). Write this information on other side of this sheet, according to the following form:

Mrs. J. Parramore (wife) and children, 213 No. 7th West.
(Name) (Relationship) (Age) (Address)

Do not Use these Spaces

Injury —— Ins. Co. —— Emp. —— File No. —— Group. —— Class. —— Counter. —— County. —— Age. —— Avg. wk. wage. —— Month. —— Year. —— Cause. —— Nature of injury. —— Part of body Injured. —— Disability. —— Comp. —— Medical —— Sex. —— Conj. —— Nativity. ——

Instructions.—Every injury to an employe, fatal or otherwise, arising out of or in the course of employment, must be reported formally to The Industrial Commission of Utah (See Sec. 95, Chapter 100, Laws of Utah, 1917.) First report of injury must be filed within a week from date of injury. Supplemental report when necessary is due thirty days after date of injury and every sixty days thereafter till history of case is complete, and such other times as required.

Accidents causing no loss of time and where no medical expense has been incurred will not be reported to this commission in the future. We request, however, that a blotter be kept in all such cases for reference in case future developments arise.

How long did injured person work for this employer at this wage prior to the accident? About two years.

State whether employment was for 5½, 6, or 7 days per week. Seven.

13. Amount injured person is earning, or is able to earn in some suitable employment or business after the accident. $— per week; $— per month.

81 14. Payment allowance or benefit received from employer. Nothing.

15. Additional amount claimed as compensation. Compensation as allowed by law. (Itemize expenditures made by you for this purpose.) $— per week for — weeks' — days' disability, from —— —, 191-, to —— —, 191-.

16. When was the employer notified of the accident? Immediately.

17. If employer was not notified within thirty days after date of accident give reason for failure to notify him. ——.

18. If application is filed to adjust claim for death state name, address and relationship of all dependents. If to adjust claim for medical attendance or funeral expenses, state name and address of all other such creditors and amount of claims, if known. (In case of death of employee this paragraph must be filled out completely.)

Name, Mary Ann Parramore, widow, 213 N. 7th W., S. L.
Owen Parramore, son, do.
Ruth Parramore, daughter, do.
Luella Parramore, daughter, do.

IV.

(Here state any further facts that may be desired).....
.....
.....

Wherefore your petitioner prays, that the above-named defendant be required to answer this petition, that a time and place be fixed for hearing hereof and due notice thereof given, and that upon such hearing, an order or award to be made by your Honorable Commission granting such relief as the said applicant may be entitled to in the premises.

Dated at Salt Lake City, Utah, this 25 day of October 1921.

(Signed) MARY ANN PARAMORE.

Address, 213 North Seventh, West Salt Lake City, Utah.

[Endorsed:] No. —. Form C 12. The Industrial Commission of Utah. —— ——, Applicant, vs. —— ——, Defendant. Application.

(Here follows original report of accident, marked page 81½.)

82 In the Supreme Court of the State of Utah.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation, Plaintiff,

vs.

MARY ANN PARRAMORE, as Widow, and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, and The Industrial Commission of Utah, Defendants.

Demurrer.

Comes now the defendant, the Industrial Commission of Utah and demurs to the petition for Writ of Review, filed by the plaintiff herein, on the ground that the same does not state facts sufficient to constitute a cause for the issuance of said writ, or for the setting aside of the award of the Industrial Commission.

HARVEY H. CLUFF,
Attorney General;
J. ROBT. ROBINSON,
W. HAL. FARR,
WM. A. HILTON,
L. A. MINER,
Assistant Attorneys General,
Attorneys for Defendant Commission.

Filed February 24, 1922.
H. W. GRIFFITH,
Clerk Supreme Court, Utah.

In the Supreme Court of the State of Utah.

No. 3778.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation, Plaintiff and Petitioner,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, deceased, and the Industrial Commission of Utah, Defendants.

Amendments to Petition for Writ of Review.

Filed April 17, 1922. H. W. Griffith, Clerk Supreme Court, Utah.

By leave of the Court, plaintiff and petitioner amends its petition for writ of review herein by adding thereto the additional paragraphs to be inserted after Paragraph VII and its subdivisions, and before

the prayer, to be known as Paragraphs VIII and IX, reading as follows:

84 VIII.

The latitude of the Commission in proceedure as provided in Sec. 3149 of the Compiled Laws of Utah, 1917, providing that "the Commission shall not be bound by the usual and common law or statutory rules of evidence or by any technical or formal rules of proceedure other than as herein provided, but may make the investigation in such manner as, in its judgment, is best calculated to ascertain the substantial rights of the parties to carry out justly the spirit of this title"—does not authorize or warrant the Commission, by any private investigation or otherwise, which it may care to make, to decide a matter between an applicant and a defendant, for compensation, without the ascertainment of facts as constituting substantial or competent evidence to support a finding or conclusion; and does not, in this case, as between the plaintiff and the defendants, warrant or authorize the Industrial Commission, under the guise of a private investigation, without the ascertainment of facts and which facts and evidence must be made to appear to support the conclusions, findings and decision of the Commission in this case; in other words, the fact that the Industrial Commission may make an investigation of the matter in such a manner as in its judgment is best calculated to ascertain the substantial rights of the parties, does not authorize or warrant the honorable Commission to disregard the facts and evidence of existing facts and circumstances, and to make findings and conclusions and enter a decision and award where the particular facts and circumstances under investigation are not made to appear. The Commission cannot hide behind its wide latitude and its power to make such investigations as it chooses, to make an award where the facts and circumstances of a particular case do not warrant such an award or such findings and conclusions as the Commission may make. To hold that the Commission has such a power in disregard of the rights of a party, and particularly in this case of the plaintiff herein, contravenes the letter and the spirit of Sec. 7 of Article I of the Constitution of the State of Utah reading as follows:

"No person shall be deprived of life, liberty or property without due process of law";

and of Sec. I of Article XIV of the constitution of the United States providing that, "no State shall make or enfore any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law."

85 There is and was no evidence in the record nor any evidence taken in this matter nor any facts found by the Commission in any investigation or proceeding, formally, informally or privately, or otherwise, to warrant or authorize the findings and conclusions and the award of the Industrial Commission in this matter.

IX.

To hold that Section 3113, which provides: "Every such employee who is killed by accident arising out of, or in the course of his employment, wheresoever such injury has occur-ed", means that said provision of the Statute extends so as to obligate the employer to indemnify its employees for accidents not a part of the hazard of the industry, and not occurring while actually engaged in the work of the employer, renders the Act contrary to the provisions of the constitution of the State of Utah, to-wit:

Sec. 7 of Article I of the constitution of the State of Utah which reads as follows:

"No person shall be deprived of life, liberty or property without due process of law"

and contrary to the provision of Sec. 1 of Article XIV of the constitution of the United States providing that:

"No State shall make or enforce any law which shall abridge the the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law"

for the reason that to so hold, makes said Statute come under the constitution's condemnation of all arbitrary power so prohibited both by the constitution of the State of Utah and the constitution of the United States as above set forth.

Salt Lake City, Utah, April 14th, 1922.

BOOTH, LEE, BADGER & RICH,
Attorneys for Plaintiff and Petitioner.

We consent that above amendments may be filed and allowed.
Copy received April 14th, 1922.

FREDRICK C. LOOFBOUROW,
Attorney for Individual Defendants.
HARVEY H. CLUFF,
Attorney General.

86 Minute Book, Vol. X.

Supreme Court Utah.

No. 3778.

CUDAHY PACKING CO. OF NEBRASKA
vs.
INDUSTRIAL COMMISSION OF UTAH.

March 4, 1922.

This cause coming on for hearing on the return made to the Writ of Review was argued by Mr. Ben Rich in behalf of the plaintiff,

by Mr. J. R. Robinson and Hon. F. C. Loofbourow in reply, was submitted and by the Court taken under advisement. Counsel granted leave to file briefs within 15 days.

Apr. 17.

No. 3778.

CUDAHY PACKING CO. OF NEBRASKA

vs.

INDUSTRIAL COMMISSION OF UTAH.

The plaintiff, Cudahy Packing Co. having applied for leave to file certain amendments to its petition for a writ of review herein, and having served the same upon attorneys for the individual defendants and the Industrial Commission; and it appearing that said attorneys, on the 14th day of April, 1922, received a copy of the proposed amendments to be known as paragraphs eight and nine of the petition for said writ of review herein.

It is therefore, ordered that the same be allowed and as of the same force and effect as though they had been originally filed as part of the original petition.

Apr. 24.

No. 3778.

CUDAHY PACKING CO. OF NEBRASKA

vs.

INDUSTRIAL COMMISSION OF UTAH et al.

This matter having been heretofore argued and submitted
87 on the return made to the writ of review issued herein, and the demurrer interposed to the petition for said writ, and the court being sufficiently advised in the premises;

It is now ordered, adjudged and decreed that the award of the commission entered into herein be, and the same is hereby, affirmed, with costs.

All concur.

Opinion of the Court by Gideon, J.

88 Filed Apr. 24, 1922. H. W. Griffith, Clerk Supreme Court, Utah.

In the Supreme Court of the State of Utah.

CUDAHY PACKING COMPANY OF NEBRASKA, a Corporation, Plaintiff,

v.

INDUSTRIAL COMMISSION OF UTAH et al., Defendants.

GIDEON, *J.*:

The plaintiff, Cudahy Packing Company, by writ of review seeks the annulment of an award made by the Industrial Commission in favor of the dependents of Joseph Parramore, deceased. The dependents and the Industrial Commission are made defendants.

There is no dispute about the dependency of the claimants, nor of the fact of employment or wages deceased received.

The plaintiff owns and operates a packing plant in what is known as North Salt Lake, in Davis County, about six miles north from Salt Lake City. More than forty per cent of its employes reside in Salt Lake City. Other employes reside in Bountiful, Centerville, and other villages located further north. Few, if any, of the employes have homes in the immediate vicinity of the packing plant. The plant is approximately one-half mile west of the Salt Lake-Ogden highway. This highway runs north and south. A county road runs west from and at right angles to the Salt Lake-Ogden highway and extends to and beyond the packing plant. A short distance from the highway the county road crosses at right angles the tracks of the Bamberger Electric Railroad. From that point west the county road is the only roadway leading to the packing plant.

The deceased was employed by the plaintiff as an engineer. His hours of work were from 7 a. m. to 4 p. m. On the morning of the accident, August 9, 1921, while riding to work with a fellow employe, he was struck by an engine on the Denver & Rio Grande Western Railroad track and instantly killed. The distance from the place of the accident to the entry to plaintiff's plant was about 100 feet. The Commission, among other things, found:

"* * * that on said date three workmen, including Mr. Parramore, all of whom lived in Salt Lake City, were traveling in an automobile owned by one of the workmen, approaching the plant where they were employed; that while crossing the main line tracks of the Denver & Rio Grande Western Railroad Company, which tracks were alongside the land upon which is located the plant of the Cudahy Packing Company, the automobile in which they were riding was struck by an engine of the railroad company and Joseph

Parramore thrown against a post in the right of way fence, which fence also enclosed the property of the Cudahy Packing Company, and was instantly killed; that within half a mile of the plant of the Cudahy Packing Company, where Mr. Parramore was employed, it was necessary that Mr. Parramore pass over the main line tracks of the Bamberger Electric Railway Company and the main line tracks of the Oregon Short Line Railroad Company, and the main line tracks of the Denver & Rio Grande Western Railroad Company, and three side tracks and transfer tracks between these various lines of railroad; that the Cudahy Packing Company furnished its employees no method of travel or conveyance in coming to or leaving the plant and most of the employees of the company lived
89 in such localities that it was necessary that they should travel, to and from their work, the road which crossed the railroad tracks above mentioned; that the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant; that the death of Mr. Parramore occurred about seven minutes before the time at which he was to commence work; that the Cudahy Packing Company does not furnish at its plant either board or lodging; that there are no public conveyances that could carry employes directly to the plant; that employees who went to their work by street cars or by the Bamberger Electric Railway must cross the railroad tracks above mentioned, either on foot or by private conveyance; that Mr. Parramore at the time he was killed was using the most direct and practicable route to the plant of the Cudahy Packing Company and the one ordinarily traveled by a majority of the employees, and by all the employees residing in Salt Lake City."

The findings are supported by competent evidence found in the record. It likewise appears that practically all travel over this county road is that of the employes and others going to the packing plant, or persons having business with the stockyards located just north of that plant. In certain seasons of the year sheep are herded in the western part of the county and are driven over this county road, but it is quite apparent that the way is maintained and kept in repair for the benefit of persons traveling to and from the plaintiff's plant.

Upon substantially the foregoing facts an award was made. Plaintiff assails that award. The controlling question before the Commission, and the one before this court, is, did the accident which caused the death of Parramore arise out of or in the course of the employment? It is insisted by plaintiff that the findings are not supported by the testimony; that under the admitted facts the injury is not compensable under the Workmen's Compensation Act of this state; that the relation of employer and employe did not exist at the time of the accident. The Act provides for compensation to every employe whose employment is subject to the Act, if injured "by accident arising out of, or in the course of his employment, wheresoever such injury has occurred." Sec. 3113, Comp. Laws Utah 1917, as amended by Ch. 63 Laws Utah 1919.

Our Workmen's Compensation Act differs from a majority of the states in that our statute uses the disjunctive "or" while in most of the compensation laws the conjunctive "and" is found. The compensation law as originally enacted in 1917 provided compensation for injuries arising out of and in the course of the employment. The Act was amended in 1919 to read as above quoted. It is apparent, therefore, that the legislature by the amendment intended to include within the statute accidents not covered by the original act.

The courts generally agree in principle respecting the elements to be considered in determining what accidents are included in the words "arising out of and in the course of the employment." The Supreme Judicial Court of Massachusetts, in re Employers' Liability Assurance Corporation, Ltd., 102 N. E. 697, has given probably as satisfactory and comprehensive a definition of these terms as can be found in any of the cases. It is not, however, necessary or desirable in the determination of this case to attempt a definition of these terms or to differentiate between accidents arising out of or in the course of the employment. If there is liability for the injury under consideration, it must be founded upon the inferrable fact that the danger incident to crossing this railroad track, by reason of its location and proximity to the packing plant, must be held to have been within the contemplation of the parties at the date of the employment. The accident would therefore both arise out of and occur in the course of employment. No other theory finds support in the decisions of the reported cases. It is admitted
90 that deceased was not on the premises of the plaintiff at the time of the acident. He was not at that time engaged in any actual work connected with his employment. The engine that ran down the automobile was in no way under the control of the plaintiff, nor was it engaged in any work for or in plaintiff's behalf. The engine was under the control of the railroad company and was running south on the main line of that road.

The Commission also found, and it is undisputed, that the plaintiff did not control nor in any way attempt to control the method or manner of travel to or from work by any of its employees. Neither did the plaintiff furnish any means of conveyance. That was left entirely with the individual employe.

It is argued by counsel for plaintiff that the Commission's finding "that the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant," is erroneous and is not supported by the evidence. In our judgment that finding is not controlling or of much significance. It is undoubtedly true that the successful operation of a packing plant is dependent upon railroad facilities, but that dependence is common to a large percentage of all manufacturing institutions. The proximity of a railroad is a matter of convenience to industries dependent upon shipping facilities. Such facts alone cannot determine the right of claimants to compensation. As above indicated, if plaintiff is liable for the accident it must be upon some

other ground than the mere fact of the convenience of having a railroad near its plant, or of its dependence upon shipping facilities.

It was customary, in fact absolutely necessary, for employes going to the plant to work to pass over and across these railroad tracks on the public road where the accident happened. No other means or way existed by which employes could get to the plant. Employes in Salt Lake City had three ways of going to their work—either by street railway, along the highway, or over the Bamberger Electric Railroad. That election of the way of travel existed until the employes reached the county road running west from the station of the Bamberger Electric line. That point is approximately one-third mile from the packing plant. In going west from that point over the county road the employes necessarily cross the main line tracks of the Oregon Short Line, the main line track of the Denver & Rio Grande Western, and three side tracks and transfer tracks. That condition existed at the time of the employment of deceased and at the time of the accident.

Some stress is laid in the argument on the fact that the roadway over which deceased was traveling was a public highway. No reason or principle is suggested why that fact should be controlling in determining the liability for this accident. It conclusively appears, however, from the testimony that the road, while known as a county road and presumably kept in repair by the county, is there for the accommodation of the plaintiff and its employes, and it is reasonably inferrable that if the packing plant was not located there the county highway would be abandoned as such. If the Workmen's Compensation Law authorizes or permits a recovery for an injury to an employe going to or returning from work over private property under particular circumstances or surroundings, there does not seem to be any logical reason why such liability should not exist in favor of a workman going to or returning from work over a public road under like circumstances or surroundings. If the liability exists, it is by reason of the fact that the plant or manufacturing establishment is so located that there is no other method or means of approach except over railroad tracks or other dangerous places, and that the same are in such close proximity to the plant that the employe has no election or option in determining or selecting his way of approach.

91 In Procaccino v. E. Horton & Sons, et al., 111 Atl. 594, the facts were similar to the facts here. In that case the deceased was employed in a manufacturing plant located immediately east of a canal. West of the canal were several railroad tracks and still farther west was a highway. The deceased had his home west of the highway. Two foot bridges were constructed over the canal from the plant to the railroad tracks. It was the custom of the deceased and other employes of the defendant manufacturing company in that case and other companies to indiscriminately use these bridges. The deceased was in the habit of going to and from his home over one of the bridges and passing over a pathway across the railroad tracks. On returning to work at the noon hour he was

injured by an engine passing along one of these tracks. In discussing the right of the dependents of the deceased, the court says:

"The defendants' employment of the decedent therefore contemplated that he would approach and leave the plant by passing to and from the highway over private property, including either of the footbridges and the railroad tracks parallel with Main street.

"Under these circumstances this employee was within the scope of his employment when he was passing to or from his work at the plant over the private property lying between Main street and the plant; in other words, the use of this method of approach to the plant by this employee was an incidental term of his contract of employment annexed to it by the consent of his employers. Merlino v. Connecticut Quarries Co., 93 Conn. 57, 104 Atl. 396.

"When this employe, under the facts found, entered upon the private property lying between Main street and the defendants' plant, he came within the zone of his employment, and all dangers and perils incident to the use of this method of approach were perils incident to and arising out of his employment."

In In re Sundine, 105 N. E. 433, the court, in considering the right of the claimant for compensation, said:

"Nor do we regard it as decisive against the petitioner that she was injured while upon stairs of which neither Olson nor Dunne & Co. had control, though they and their employes had the right to use them. These stairs were the only means available for going to and from the premises, where she was employed, the means which she practically was invited by Olsen and by Dunne & Co. to use. In this respect, the case resembles Moore v. Manchester Liners, ubi supra; and that case, decided under the English act before the passage of our statute, must be regarded as of great weight. [Citing cases.]

"It was a necessary incident of the petitioner's employment to use these stairs. We are of opinion that according to the plain and natural meaning of the words an injury that occurred to her while she was so using them arose 'out of and in the course of' her employment."

In the second headnote in Judson Mfg. Co. et al. v. Ind. Acc. Com. 181 Cal. at p. 300, which reflects the opinion of the court, it is said:

"The death of an employee of a manufacturing company resulted from an injury arising out of his employment when he was struck and killed by an engine operated by a railroad company while he was pursuing his way to work along a path crossing the tracks, where such path, although not a public highway, was only the sole means of ingress and egress for the employees to their place of work, but was the means of access required and authorized by the manufacturing company, and intimately associated with the company's plant as a part of its necessary establishment."

The Supreme Court of West Virginia, in De Constantin v. Pub. Service Com., 83 S. E. at p. 89, in considering a question similar to the one presented by this record, says:

92 "Since injury after termination of actual work, while on the premises of the employer and in pursuit of the usual way of leaving the same, is held to be within the course of employment and to have arisen out of the same, it seems clear that an injury to a workman while coming to his place of work on the premises of the employer and by the only way of access, or the one contemplated by the contract of employment, must also be regarded as having been incurred in the course of the employment and to have arisen out of the same. If, in such case, injury does not occur on the premises, but in close proximity to the place of work and on a road or other way intended and contemplated by the contract as being the exclusive means of access to the place of work, the same principle would apply and govern. If the place at which the injury occurred is brought within the contract of employment, by the requirement of its use by the employe, so that he has no discretion or choice as to his mode or manner of coming to work, such place and its use seem logically to become elements or factors in the employment, and the injury thus arises out of the employment and is incurred in the course thereof. But, on the contrary, if the employe, at the time of the injury, has gone beyond the premises of the employer, or has not reached them, and has chosen his own place or mode of travel, the injury does not arise out of his employment, nor is it within the scope thereof."

See also 1 Honnold on Workmen's Comp., 1368 and Lumbermen's Reciprocal Assn. v. Behnken et al., 226 S. W. 154.

Plaintiff's contention is that the deceased received the injury while on his way to work at a place not under its control, and at a time when the relation of employer and employe did not exist. It is therefore argued that the deceased was exposed to no other or greater dangers than any member of the public traveling over this road; that any accident resulting from such exposure does not entitle the injured person to compensation under the Workmen's Compensation Act, regardless of the fact of employment. Numerous cases are cited in support of that contention, among others the following: In re Employers Liability Assurance Corp., 102 N. E. 697; Honnold, Work. Comp. 1917, Sec. 359; Nowalek et al. v. N. Y. Con. R. Co. (N. Y.) 128 N. E. 888; United D. & R. Co. v. Ind. Com., 126 N. E. 184; In re Brown, 169 N. Y. S. 1047, 15 N. C. C. A. 290; Leveroni v. Travelers Ins. Co., 107 N. E. 349; City of Milwaukee v. Althoff, 156 Wis. 68, 145 N. W. 238; Wilson v. H. C. Frick Coke Co., 110 Atl. 723.

Conceding that the weight of authority denies to an employe the right to compensation for an injury received while on his way to or from his employment, the question here, in its final analysis, is, Did the particular facts surrounding this accident make this case an exception to the holdings of the courts? The Commission was of

the opinion that the facts in this case warranted the conclusion that the general rule invoked by plaintiff did not apply. It is not easy, and probably not possible or desirable, to state any general rule applicable to every condition or state of facts by or under which compensation can be allowed or denied to an employe. Courts are usually controlled in allowing or denying compensation by the peculiar facts of each case. In In re Bollman, 126 N. E. 639, the Supreme Court of Indiana says: "The question in each case must be determined from a consideration of its own facts and circumstances." That statement is approved by the same court in a later case—Empire H. & A. Ins. Co. v. Purcell, 132 N. E. 664.

Considering the findings of the Commission and the undisputed facts which appear in this record, and weighing the effect of those facts in the light of the authorities, we are of the opinion that there is sufficient competent testimony to support the Commission's
93 findings and that the findings applied to the particular facts in this case support the award.

Since the oral argument and the submission of this case plaintiff has asked and received permission to file an amendment to its petition for writ of review. The burden of the amendment is that the compensation law contravenes both the State and Federal Constitutions—that it in effect deprives the individual of property without due process of law. It is insisted that

"To hold that Section 3113, which provides: 'Every such employee who is killed by accident arising out of, or in the course of his employment, wheresoever such injury has occurred,' etc., means that said provision of the Statute extends so as to obligate the employer to indemnify its employees for accidents not a part of the hazard of the industry, and not occurring while actually engaged in the work of the employer, renders the Act contrary to the provisions of the Constitution of the State of Utah, to-wit:

"Sec. 7 of Article I of the Constitution of the State of Utah which reads as follows:

" 'No person shall be deprived of life, liberty of property without due process of law'

and contrary to the provisions of Sec. 1 of Article XIV of the Constitution of the United States providing that:

" 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law'

for the reason that to so hold, makes said Statute come under the constitutions' condemnation of all arbitrary power so prohibited both by the Constitution of the State of Utah and the Constitution of the United States as above set forth."

That the general and underlying principles of the Workmen's Compensation Law do not conflict with any constitutional right of

employer or employe is not an open question in this state. (Ind. Com. v. Daly Min. Co., 172 Pac. 301; Garfield Smelting Co. v. Ind. Com., 178 Pac. 57; Ind. Com. v. Evans, 174 Pac. 825; Reteuna v. Ind. Com., 185 Pac. 535; Utah Copper Co. v. Ind. Com., 193 Pac. 24; Salt Lake City v. Ind. Com., 199 Pac. 152.) The contention here, however, seems to be that that part of Sec. 3113, supra, which authorizes compensation for an injury "wheresoever such injury has occurred" is an attempt to charge an industry for something not a part of the hazard of such industry. Of necessity, that phrase should be construed in connection with and as a part of the entire section. When so construed it follows that the accident, wheresoever it has occurred, must also arise out of or be in the course of the employment. So interpreted we fail to see any infringement of plaintiff's constitutional rights.

We are referred to the opinion of the Supreme Court in Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, as supporting plaintiff's contention. It does not appear in the record before this court that the Commission or any member of it visited the place of the accident. On the contrary it is affirmatively stated in plaintiff's brief that the Commission did not visit the place of the accident. Presumably therefore nothing was considered by the Commission except testimony taken at a regular hearing. We are, however, of the opinion and so hold that it affirmatively appears from the testimony found in this record that the Commission's findings are supported by such testimony. The opinion of the Supreme Court in the above case is therefore not applicable or controlling in this case.

The award is affirmed with costs.

We concur:

E. E. CORFMAN, *C. J.*
A. J. WEBER, *J.*
S. R. THURMAN, *J.*
J. E. FRICK, *J.*

94 In the Supreme Court of the State of Utah.

No. 3778.

CUDAHY PACKING CO. OF NEBRASKA, a Corporation,
Plaintiff and Petitioner,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Person and Estate of Owen Parramore, Ruth Parramore, and of, Joseph Parramore, Deceased, and The Industrial Commission of Utah, Defendants.

Petition for a Rehearing and Brief.

Filed May 13, 1922. H. W. Griffith, Clerk Supreme Court, Utah.

The Cudahy Packing Co. of Nebraska, plaintiff and petitioner herein, feeling aggrieved, and being dissatisfied with the decision of this honorable Court filed herein, on or about April 24th, 1922, respectfully petitions this honorable Court for a rehearing upon the following grounds, to-wit:

(1) This Court erred in holding that the findings of the Industrial Commission are supported by competent evidence found in the record in this, particularly, that the record does not support the finding of the Industrial Commission that on the 9th of
95 August, 1921, Joseph Parramore was fatally injured by accident at or near their (Cudahy's) plant, located about six miles north of Salt Lake City, Utah, while employed by the Cudahy Packing Co. of Nebraska.

(2) This Court erred in holding that the findings of the Commission are supported by competent evidence found in the record, and then this Court went beyond the findings and the record and made findings itself not contained in the findings of the Commission, and held "if there is liability for the injury under the consideration, it must be founded upon the inferable fact that the danger incident to crosing this railroad track by reason of its location and proximity to the packing plant, must be held to have been within the contemplation of the parties at the date of the employment," which is not a finding of the Industrial Commission but a finding made by this Court, and as to which this Court has no jurisdiction, as Section 3148 of the Compensation Act of Utah provides that the review by this Court shall not be extended further than to determine whether or not (1) the Commission acted without or in excess of its powers, (2) if findings of fact are made whether or not such findings of fact support the award under review.

(3) The court seriously erred in finding that "It is quite apparent that the way (referring to the county road) is maintained and kept in

repair for the benefit of persons traveling to and from the plaintiff's plant" as being a finding and conclusion volunteered by this Court with nothing whatever in the record or under the facts, or from which the same can be inferred to support the finding.

(4) The Court further seriously erred in finding that "It conclusively appears, however, from the testimony that the road, while known as a County road and presumably kept in repair by the County, is there for the accommodation of the plaintiff and its employees and it is reasonably inferable that if the packing plant was not located there, the County highway would be abandoned as such," which is a finding volunteered by this Court, not found by the commission, and not supported by any fact in the record, nor to be inferred from any fact of the record, but, on the contrary, directly opposed to the undisputed facts as they exist in the record, and contrary to the facts and conditions of which this Court should take judicial notice.

96 (5) The Court erred in holding as against the undisputed facts of the record, in effect, that the County road upon which the deceased was traveling when he was killed at a public railway crossing, was a mere private road or righ-of-way kept and maintained for the exclusive benefit of the packing plant.

(6) The Court erred in holding, in effect, by misinterpreting and misapplying the facts as to the public County road and public railroad crossing, by making the same a mere private road or private right-of-way, that the deceased was not a member of the public and that the risks incurred of the deceased, were not those of the commonalty or public.

(7) The Court erred in holding in effect, by sustaining the decision of the Industrial Commission that the deceased met with his death while in the course of his employment, from a risk or hazard of the industry of the Cudahy Packing Company and not while a member of the public on a public highway, at a public railway crossing upon his own business.

(8) The Court erred in misapplying the Workmen's Compensation Act to the facts in this case, as providing for life insurance to be paid by the employer, and not compensation for an industrial accident from any hazard of the industry of the employer.

(9) The Court erred in not applying the constitutional provisions of the State of Utah, Section 7 of Article I, of the Constitution of Utah providing that no person shall be deprived of property without due process of law, and the provisions of Section 1 of Article XIV of the Constitution of the United States providing that no State shall deprive any person of property without due process of law, as applicable under the facts of this particular case, as under the facts, the decision of the Industrial Commission was arbitrary, and likewise, the decision of this Court is arbitrary in sustaining the award of the Commission upon grounds which do not

exist in the record, in this: That the deceased did not meet with
his death from any hazard or danger of the industry of the Cudahy
Company in the course of his employment, and in this, that the
Court, by mere dixit, has wiped out a generally frequented and a
long established county road, at a public railway crossing, and sub-
stituted a mere right-of-way or private road of the Cudahy Pack-
ing Company so that it is made to appear, contrary to the
97–115 facts and record, that the deceased was not a member of
the public but going to work at the time he met with his
death, up a mere private way, which, but for the operation of the
plant, would be abandoned.

(10) The Court erred in holding that the applicants in the Parra
more case (defendants herein) were entitled to compensation unde
the provisions of the Workmen's Compensation Act of the State o
Utah, and by so doing, the decision of this Court is contrary t
Section 1 of Article V of the Constitution of the State of Utah
providing that:

"The powers of the government of the State of Utah shall b
divided into three distinct departments, the legislative, the executiv
and the judicial; no person charged with the exercise of powe
properly belonging to one of these departments shall exercise an
functions appertaining to either of the others, except in cases herei
expressly directed or permitted."

The decision of this Court is in violation of the foregoing pr
vision of the Constitution for the reason that the Workmen's Con
pensation Act expressly limits the right to compensation to acciden
arising out of or in the course of the employment; and by th
decision of this Court, the Act is broadened to give compensation
the applicants where the injury and death was not the result of a
accident arising out of or in the course of Parramore's employmen
that this Court, by its decision, has exercised legislative powers an
functions in that it has broadened and enlarged upon the Act
make the employer liable as an insurer of the life of the employ
while the employee, when killed, was not within the course of h
employment, and the relationship of employer and employee did n
exist.

* * * * * * *

116 We therefore pray that a rehearing of this cause be grant
so that the same may be re-examined and reconsidered,
lieving as we do, when that is done that the decision and award
the Industrial Commission and the decision of this Court affirmi
the same will be set aside and reversed.

BOOTH, LEE, BADGER & RICH,
Attorneys for Plaintiff & Petitioner

STATE OF UTAH,
County of Salt Lake, ss:

We, the undersigned, Hiram E. Booth and Benjamin L. Rich, each one of the attorneys for the above named plaintiff and petitioner, hereby certifies that in his opinion there is good reason to believe that the judgment of this Court herein objected to, is erroneous, and that the cause ought to be re-examined; and each believes and is of the opinion that if the said cause be re-examined and reconsidered by this Court, a result ought to be and will be reached as in the foregoing petition prayed.

Dated this 13th day of May, 1922.

HIRAM E. BOOTH.
BENJAMIN L. RICH.

117 In the Supreme Court of the State of Utah, Regular May Term, May 23, 1922.

CUDAHY PACKING COMPANY OF NEBRASKA, Plaintiff,

v.

MARY ANN PARRAMORE, etc., and INDUSTRIAL COMMISSION OF UTAH, Defendants.

In this cause, it is ordered that the petition for a rehearing filed herein be, and the same is hereby, denied.

118 In the Supreme Court of the State of Utah.

#3778.

CUDAHY PACKING CO. OF NEBRASKA

vs.

INDUSTRIAL COMMISSION OF UTAH et al.

On Application for Rehearing.

GIDEON, *J.:*

In a petition for rehearing plaintiff complains that the court has grievously erred in stating certain facts. It is especially urged that the testimony does not warrant the conclusion found in the opinion to the effect that the public road over which the deceased was traveling was used and maintained largely, if not wholly, for the accommodation of the plaintiff's employes. In the argument for a rehearing the testimony bearing upon that particular question is set out at length. While we think the record warrants the statement of the court, such statement is not controlling. Neither is it the basis upon which the court rests its opinion. If counsel were right in the con-

clusion that the court's judgment was founded on such statement some justification for counsel's argument might have a basis in fact. The exact contrary is the fact, and it so appears from the opinion.

A statement of assumed facts is made in the argument and counsel seem anxious to know what the judgment of this court would be under such facts. In answer to that suggestion it is sufficient to say that it will be the duty of this court to determine the rights of the parties as in its judgment the law applicable justified when such facts as assumed are presented. We reaffirm the statement in the opinion, that every case must depend upon its own particular facts. We have determined the rights of the parties to this proceeding under the facts presented in the record. Nothing is advanced in the petition for a rehearing to justify a different conclusion. The petition for a rehearing is denied.

All concur:

E. E. CORFMAN.
J. E. FRICK.
A. J. WEBER.
S. R. THURMAN.

Filed May 23rd, 1922.

H. W. GRIFFITH,
Clerk Supreme Court, Utah.

119 In the Supreme Court of the State of Utah.

3778.

CUDAHY PACKING COMPANY OF NEBRASKA, Plaintiff,

v.

MARY ANN PARRAMORE, etc., and INDUSTRIAL COMMISSION OF UTAH, Defendants.

Order.

It appearing to the court that the Cudahy Packing Company of Nebraska, said plaintiff, desires to appeal said cause to the Supreme Court of the United States or to take the matter up by writ of error or certiorari proceedings; and it further appearing that on or about the 24th day of May, 1922, the record heretofore filed with the clerk of this court from the Industrial Commission, was returned to the Industrial Commission, and that it will be necessary and desirable in perfecting such appeal or proceedings for review for the Supreme Court of the United States, that the clerk of this court certify to the whole record;

It is therefore ordered that the record heretofore filed with the clerk of this court by the Industrial Commission and by the clerk returned to the Industrial Commission, be returned to the files of this court.

S. R. THURMAN,
Justice Supreme Court.

Dated July 11, 1922.

Filed July 11, 1922.
H. W. GRIFFITH,
Clerk Supreme Court.

120 Filed July 18, 1922. H. W. Griffith, Clerk Supreme Court of Utah.

In the Supreme Court of the State of Utah.

THE CUDAHY PACKING COMPANY OF NEBRASKA, a Corporation, Petitioner and Plaintiff in Error,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, and The Industrial Commission of Utah, Defendants in Error.

To the Honorable E. E. Corfman, Chief Justice of the Supreme Court of the State of Utah:

The petition of The Cudahy Packing Company of Nebraska, a corporation organized and existing under the laws of the State of Nebraska, and qualified to do business in the State of Utah, plaintiff and petitioner for review in the above entitled cause in the Supreme Court of Utah (and hereinafter referred to as "Petitioner"), respectfully shows:

1. That "Petitioner" owns and operates a packing plant located at North Salt Lake in the County of Davis and State of Utah; that "Petitioner" is there engaged in a general packing house business and has several hundred persons in its employ;

2. That on October 25th, 1921, Mary Ann Parramore, as widow and as guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, commenced before The Industrial Commission of Utah a proceeding against "Petitioner" for compensation on account of the death of the said Joseph Parramore, arising out of an accident alleged to have occurred during his employment by "Petitioner;"

121 3. That after hearing the allegations and proofs of the parties in said cause The Industrial Commission of Utah on December 19th, 1921, made an award of compensation to be paid by "Petitioner" to Mary Ann Parramore, as widow of the de-

ceased, and as guardian of Owen Parramore, Ruth Parramore and Luella Parramore, the minor children of Joseph Parramore, in the sum of Sixteen Dollars ($16.00) per week beginning August 9th, 1921, for a period not to exceed three hundred and twelve (312) weeks, and also reasonable funeral expenses, and attorneys' fees of one hundred and thirty-five dollars ($135.00); that thereafter "Petitioner" made an application to The Industrial Commission of Utah for a rehearing, and that the said application was denied on January 17th, 1922;

4. That thereafter on Feb. 10th, 1922, "Petitioner" filed its petition for writ of review in the Supreme Court of the State of Utah seeking to set aside the said award of The Industrial Commission of Utah; that subsequently on April 17th, 1922, by agreement of counsel and upon leave of Court, "Petitioner" filed its amended petition for review in the same cause;

5. That "Petitioner," in its petition for review as amended, contended (*a*) that the award of The Industrial Commission was in violation of Section I of Article XIV of the Constitution of the United States in that the findings and conclusions and the said award of The Industrial Commission of Utah in the said cause were unauthorized and unwarranted; (*b*) that the Workmen's Compensation Act of Utah, Chapter 100, Laws of Utah, 1917, as amended by Chapter 63, Laws of Utah, 1919, as further amended by Chapter 67, Laws of Utah, 1921, which provides compensation in cases where an employee is killed in an accident "arising out of, or in the course of his employment, wheresoever such injury has occurred," is contrary to the provisions of Section I, Article XIV of the Constitution of the United States; that the Supreme Court of Utah overruled the said contentions of "Petitioner," and thereafter, on April 24th, 1922, filed in the office of the Clerk of the Supreme Court of Utah its opinion affirming the decision and the said award of The Industrial Commission of Utah; that thereafter your petitioner duly applied to the Supreme Court of Utah for a rehearing of the said cause; that on May 23rd, 1922, the said Supreme Court entered an order denying the said last mentioned application for a rehearing; that the said Supreme Court of the State of Utah is the highest court of the said State of Utah in which a decision of the matter could be had;

122

6. That as more fully appears from the record of the proceedings had in this case, on August 9, 1921, the said Joseph Parramore, while riding to work on a public highway in an automobile belonging to a fellow workman, was struck by a railway engine (not owned by or engaged in the business of petitioner) and was instantly killed; that at the time of this fatal accident the said Joseph Parramore was not on the premises of "Petitioner" and was not engaged in the performance of any of the duties incident to his employment by "Petitioner;" that the accident which resulted in the death of the said Joseph Parramore did not arise out of or in the course of his em-

ployment by "Petitioner;" and that The Industrial Commission of Utah was without jurisdiction in the said cause.

7. That under and by virtue of Section 3148 of the said act creating the State Industrial Commission of Utah, the said Commission was a party defendant to said petition for review in the Supreme Court of Utah and appeared therein by the Attorney General of the State of Utah in support of the validity of the award of the said Commission to the claimant herein, and of the said statute under which said award purported to have been made.

Wherefore, your petitioner prays that a writ of error from the Supreme Court of the United States may issue in this cause
123 to the Supreme Court of Utah for the correction of errors complained of and more fully set forth in the assignments of error filed herein; and that a transcript of the record, proceedings and papers in this case duly authenticated by the Clerk of the Supreme Court of Utah may be sent to the Supreme Court of the United States as provided by law and for citation and supersedeas to the end that the errors of which your petitioner complains herein and the assignments of error filed herewith may be reviewed and if errors be found, corrected conformably to the Constitution and the laws of the United States.

Dated this 15th day of July, 1922.

THE CUDAHY PACKING COMPANY OF NEBRASKA,
By GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for Petitioner.

124 [Endorsed:] No. 3778. In the Supreme Court of the State of Utah, The Cudahy Packing Company of Nebraska, a Corporation, Petitioner and Plaintiff in Error, vs. Mary Ann Parramore, as Widow, and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore and Luella Parramore, Minor Children of Joseph Parramore, Deceased, and The Industrial Commission of Utah, Defendants in Error. Petition for Writ of Error. George T. Buckingham, 105 So. La Salle St., Chicago. Thomas Creigh, R. B. Webster, Stephen E. Hurley. Defrees, Buckingham & Eaton, Chicago.

125 In the Supreme Court of the State of Utah.

3778.

THE CUDAHY PACKING COMPANY OF NEBRASKA, a Corporation, Petitioner and Plaintiff in Error,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, and the Industrial Commission of Utah, Defendants.

Order.

Filed July 18, 1922. H. W. Griffith, Clerk Supreme Court of Utah.

On reading the petition of The Cudahy Packing Company of Nebraska, a corporation, for writ of error and the assignment of errors, and upon due consideration of the record of said cause;

It is ordered, That a writ of error be allowed from the Supreme Court of United States to the Supreme Court of the State of Utah, as prayed for in said petition and that said writ of error, and citation thereon, be issued, served and returned to the Supreme Court of the United States in accordance with law upon condition that the said petitioner and plaintiff in error, The Cudahy Packing Company of Nebraska, a corporation, give security in the sum of Seven Thousand Dollars ($7,000); and if said plaintiff in error shall prosecute said writ of error to effect and, if said plaintiff in error fail to make its plea good, shall answer to the defendants in error for all costs and damages that may be adjudged or decreed on account of said writ of error.

And said plaintiff in error now presenting a bond in the sum of Seven Thousand Dollars ($7,000) with the Hartford Accident & Indemnity Company, a corporation, as surety, it is ordered that the same be and hereby is duly approved.

In witness whereof, I have hereunto set my hand this 18th day of July, 1922.

E. E. CORFMAN,
Chief Justice of the Supreme Court of the State of Utah.

126 [Endorsed:] In the Supreme Court of the State of Utah. The Cudahy Packing Company of Nebraska, a corporation, Petitioner and Plaintiff in error, vs. Mary Ann Parramore, as Widow, and as guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of, Joseph Parramore, deceased, and the Industrial Commission of Utah Defendants. Order. George T. Buckingham, 105 So. La Salle St., Chicago. Thomas Creigh, R. B. Webster, Stephen E. Hurley. Defrees, Buckingham & Eaton, Chicago.

127 Filed Jul. 18, 1922. H. W. Griffith, Clerk Supreme Court of Utah.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Utah, Greeting:

Because in the record of proceedings, as also in the rendition of the judgment in the above entitled cause, which is in the State Supreme Court of Utah, before you or some of you, being the highest court of law or equity of the said State of Utah in which a decision could be had in the said suit between The Cudahy Packing Company of Nebraska, a corporation, plaintiff and petitioner for writ of review, and Mary Ann Parramore, as widow, and as guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, and the Industrial Commission of Utah, are defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the State of Utah on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity, or wherein any title, right, privilege or immunity was claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such Constitution, treaty, statute, commission or authority, a manifest error hath happened to the great damage of the said The Cudahy Packing Company of Nebraska, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the case, to the Supreme Court of the United States, together with this writ, so that you have the same in
128 the said Supreme Court at Washington, within thirty days from the date hereof; that the record and proceedings thereto being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 18th day of July, in the Year of Our Lord, One Thousand Nine Hundred and Twenty-two.

[Seal of United States District Court, District of Utah.]

[SEAL.] JOHN W. CHRISTY,
Clerk of the District Court of the United States for the District of Utah.

Approved and allowed by
E. E. CORFMAN,
Chief Justice of the Supreme Court of the State of Utah.

129 [Endorsed:] In the Supreme Court of the United States. The Cudahy Packing Company of Nebraska, a corporation, vs. Mary Ann Parramore, as Widow, and as guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of, Joseph Parramore, deceased, and The Industrial Commission of Utah. Writ of Error. George T. Buckingham, 105 So. La Salle St., Chicago. Thomas Creigh, R. B. Webster, Stephen E. Hurley. Defrees, Buckingham & Eaton, Chicago.

130 In the Supreme Court of Utah.

3778.

THE CUDAHY PACKING COMPANY OF NEBRASKA, a Corporation, Plaintiff in Error,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, and The Industrial Commission of Utah, Defendants in Error.

Assignment of Errors.

Filed July 18, 1922. H. W. Griffith, Clerk Supreme Court of Utah.

Now comes the Cudahy Packing Company of Nebraska, a corporation, plaintiff and petitioner for a writ of review in the above entitled cause in the Supreme Court of the State of Utah (hereinafter referred to as plaintiff in error), and in connection with its petition for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Utah, says:

That in the record, proceedings, decision and final judgment of the said Supreme Court of the State of Utah in the above entitled matter, manifest error has intervened to the prejudice of plaintiff in error, wherefore it here assigns the following errors, to-wit:

1. The Court erred in refusing to hold that the provisions of the Workmen's Compensation Act (an Act creating The Industrial Commission of Utah, Sections 3061 to 3165, inclusive, of the
131 Compiled Laws of Utah, 1917 as amended) Chapter 100, Laws of Utah, 1917, as amended by Chapter 63, Laws of Utah, 1919, and as further amended by Chapter 67, Laws of Utah, 1921, is unconstitutional and contrary to Section One of the Fourteenth Amendment to the Constitution of the United States in that the State of Utah, by and through the provisions of said Act, assumes and seeks:

(*a*) To deprive plaintiff in error and certain other persons of property without due process of law;

(*b*) To deny to the plaintiff in error and certain other persons the equal protection of the laws;

(*c*) To deprive plaintiff in error and certain other citizens of the United States of privileges and immunities secured to the citizens of the United States.

2. The Court erred in that its judgment deprives the plaintiff in error of its property without due process of law contrary to Section One of the Fourteenth Amendment to the Constitution of the United States for the reason that Section 3113 of said Act as amended, which provides that "Every such employee who is killed by accident arising out of, or in the course of his employment, wheresoever such injury has occurred," etc., as construed by the said Court authorizes the taking of property of the plaintiff in error without due process of law in that the said section provides compensation to employees (or their dependents) for death or injuries wholly unrelated to their employment and having no causal connection therewith.

3. The Court erred in holding that by said Section 3113 of said Act as applied and construed in said cause, plaintiff in error is not denied the equal protection of the laws.

4. The Court erred in that, irrespective of the constitutionality or validity of said Act, its action in affirming the award of The Industrial Commission of Utah in this cause deprives the plaintiff in error of its property without due process of law in violation of Section One of the Fourteenth Amendment to the Constitution of the United States in that it appears from the proceedings had and the evidence submitted that the said action of the Court was arbitrary and wholly unauthorized and unwarranted and in disregard of the Constitution of the United States and of the Constitution and the Laws of the State of Utah.

132

5. The Court erred in that, irrespective of the constitutionality and validity of said Act, its action as aforesaid in affirming the said award of The Industrial Commission of Utah denied to the plaintiff in error the equal protection of the laws contrary to Section One of the Fourteenth Amendment to the Constitution of the United States.

6. The Court erred in affirming the said award of The Industrial Commission of Utah, thereby depriving plaintiff in error of its property without due process of law in violation of Section One of the Fourteenth Amendment to the Constitution of the United States in that the evidence submitted conclusively shows that The Industrial Commission in making its said award was wholly without jurisdiction for the reason that the death of Joseph Parramore (upon which claim for compensation is based) did not result from an accident arising out of or in the course of his employment by the plaintiff in error.

By reason whereof plaintiff in error prays that the said judgment of the Supreme Court of the State of Utah may be reversed, set aside and wholly for naught esteemed.

GEORGE T. BUCKINGHAM,
THOS. CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for the Cudahy Packing Company of Nebraska.

133 [Endorsed:] In the Supreme Court of Utah. The Cudahy Packing Company of Nebraska, a corporation, Plaintiff in Error, vs. Mary Ann Parramore, as Widow, and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, and The Industrial Commission of Utah, Defendants in Error. Assignment of Errors. George T. Buckingham, 105 So. La Salle St., Chicago. Thomas Creigh, R. B. Webster, Stephen E. Hurley. Defrees, Buckingham & Eaton, Chicago.

134 3778.

Bond.

Filed, July 18, 1922. H. W. Griffith, Clerk Superior Court of Utah.

Know all men by these presents, that we The Cudahy Packing Company of Nebraska, a corporation, as principal, and Hartford Accident & Indemnity Company, a corporation, as surety, are held and firmly bound unto Mary Ann Parramore, as widow of the deceased, and as guardian of Owen Parramore, Ruth Parramore and Luella Parramore, the minor children of Joseph Parramore, deceased, in the sum of Seven Thousand Dollars ($7,000.) to be paid to the said Mary Ann Parramore, as Widow, and as Guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, or their heirs, executors, administrators, successors or assigns to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals this 18th day of July, in the Year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas the above named plaintiff in error, The Cudahy Packing Company of Nebraska, a corporation, has sued out a writ of error from the United States Supreme Court to the Supreme Court of the State of Utah to reverse the judgment of the Supreme Court of Utah rendered on the 24th day of April, 1922, in the suit of The Cudahy Packing Company of Nebraska, a corporation, vs. Mary Ann Parramore, as widow, and as guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore,

minor children of Joseph Parramore, deceased, and the Industrial Commission of Utah, in which last mentioned suit an order
135 was entered denying a petition for rehearing on May 23, 1923.

Now, therefore, the condition of this obligation is such that if the said The Cudahy Packing Company of Nebraska shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation is to be void, otherwise to remain in full force and effect.

[Corporate Seal.] THE CUDAHY PACKING COMPANY OF NEBRASKA,
By JNO. E. WAGNER, [SEAL.]
Treasurer.

[Corporate Seal.] HARTFORD ACCIDENT & INDEMNITY COMPANY,
By GEO. J. CANNON, [SEAL.]

Attest:

F. M. WHITNEY,
Attorney in Fact.

Approved this 18th day of July, 1922.

E. E. CORFMAN,
Chief Justice of the Supreme Court of Utah.

STATE OF UTAH,
County of Salt Lake, ss:

Geo. J. Cannon and F. M. Whitney being first duly sworn on oath, depose and say: That they are the attorneys in fact of the Hartford Accident and Indemnity Company, and that they are duly authorized to execute and deliver the foregoing obligation; that said company is authorized to execute the same and has complied in all respects with the laws of Utah, in reference to becoming sole surety upon bonds, undertakings and obligations.

GEO. J. CANNON.
F. M. WHITNEY.

Subscribed and sworn to before me this 17th day of July, 1922.

[SEAL.] B. F. WILLIS,
Notary Public, Residing at Salt Lake City.

136 [Endorsed:] The Cudahy Packing Company of Nebraska, a corporation, vs. Mary Ann Parramore, etc. Bond. George T. Buckingham, 105 So. La Salle St., Chicago; Thomas Creigh, R. B. Webster, Stephen E. Hurley. Defrees, Buckingham & Eaton, Chicago.

137 Filed Jul. 18, 1922. H. W. Griffith, Clerk Supreme Court of Utah.

3778.

UNITED STATES OF AMERICA, *ss:*

To Mary Ann Parramore, as widow and as guardian of the persons and estates of Owen Parramore, Ruth Parramore, and Luella Parramore, minor children of Joseph Parramore, deceased, and The Industrial Commission of Utah:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date of the service of this citation, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Utah wherein The Cudahy Packing Company of Nebraska, a corporation, is plaintiff and petitioner for writ of review, and you are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff and petitioner for a writ of review, as in the said writ of review mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the hand and seal of the Honorable, the Chief Justice of the Supreme Court of Utah, this 18 day of July, in the Year of our Lord, One Thousand Nine Hundred and Twenty-two.

E. E. CORFMAN,
Chief Justice of the Supreme Court of the State of Utah.

138 Service of the within Citation accepted this 18 day of July, 1922.

HARVEY H. CLUFF,
Attorney General of the State of Utah, Attorney for the Industrial Commission of Utah,
By ROBT. ROBINSON,
Assistant Attorney General.

Service of the within Citation accepted this 18 day of July, 1922.

FREDERICK C. LOOFBOUROW,
Attorney for Mary Ann Parramore, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased.

139 [Endorsed:] In the Supreme Court of the United States. The Cudahy Packing Company of Nebraska, a corporation, vs. Mary Ann Parramore, as widow, and as guardian of the persons

and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, and the Industrial Commission of Utah. Citation. George T. Buckingham, 105 So. La Salle St., Chicago; Thomas Creigh, A. B. Webster, Stephen E. Hurley. Defrees, Buckingham & Eaton, Chicago.

140 In the Supreme Court of the State of Utah.

THE CUDAHY PACKING COMPANY OF NEBRASKA, a Corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, Luella Parramore, Minor Children of Joseph Parramore, Deceased, and The Industrial Commission of Utah.

Præcipe for Record.

Filed, July 18, 1922. H. W. Griffith, Clerk Supreme Court.

The Clerk of the Supreme Court of Utah will please prepare the record upon the writ of error in the above cause from the Supreme Court of the United States to the Supreme Court of Utah and incorporate in said record copies of the following pleadings, notices, appearances, process, orders, documents and certificates as are or may be of record in the above entitled cause:

1. Petition for writ of review filed February 10, 1922 and Exhibit A attached thereto;

2. Writ of review issued February 10, 1922 and return;

3. Complete record as originally filed in the Supreme Court of Utah on February 23, 1922, certified to by the Secretary of The Industrial Commission of Utah;

4. Demurrer to writ of review filed on February 24, 1922;

5. Amendment to petition for review filed on April 17, 1922;

141 6. Order entered on March 17, 1922 permitting amendment to petition for review and stipulation of counsel relating thereto;

7. Opinion of Supreme Court of Utah affirming award of The Industrial Commission filed April 24, 1922;

8. Order entered by Supreme Court on April 24, 1922, affirming the award of The Industrial Commission;

9. Petition for rehearing filed May 13, 1922;

10. Order entered by Supreme Court on May 23, 1922, denying the petition for rehearing;

11. Entries relating to return of record to The Industrial Commission;

12. Order entered by the Supreme Court on July 11, 1922, directing the return of the record from The Industrial Commission to the Clerk of the Supreme Court;

13. Petition for writ of error from Supreme Court of United States to Supreme Court of Utah;

14. Assignment of errors;

15. Order allowing writ of error and supersedeas from Supreme Court of United States to Supreme Court of Utah;

16. Writ of error showing return with usual certificates from Supreme Court of the United States to Supreme Court of Utah;

17. Supersedeas bond filed on writ of error;

18. Citation and proof of service;

19. Præcipe for record.

20. All record entries in the Supreme Court of Utah.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for the Cudahy Packing Company of Nebraska.

142 Received a copy of the within notice and præcipe for record this 18 day of July, A. D. 1922.

HARVEY H. CLUFF,
Attorney General of the State of Utah, Attorney for the Industrial Commission of Utah,
By J. ROBT. ROBINSON,
Asst. Atty. General.

Received a copy of the within notice and præcipe for record this 18 day of July, A. D. 1922.

FREDERICK C. LOOFBOUROW,
Attorney for Mary Ann Parramore, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased.

143 [Endorsed:] In the Supreme Court of the State of Utah. The Cudahy Packing Company of Nebraska, a corporation, vs. Mary Ann Parramore, as Widow and as Guardian of the persons

and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, and The Industrial Commission of Utah. Præcipe for Record. George T. Buckingham, 105 South La Salle Street, Chicago; Thomas Creigh, R. B. Webster, Stephen E. Hurley.

144 STATE OF UTAH:

Supreme Court.

No. 3778.

CUDAHY PACKING COMPANY OF NEBRASKA, Plaintiff,

v.

MARY ANN PARRAMORE, as Widow and Guardian, etc., and INDUSTRIAL COMMISSION OF UTAH, Defendants.

Booth, Lee, Badger & Rich,
Attorneys for Plaintiff.

Frederick C. Loofbourow and
Harvey H. Cluff,
Atty. General, et al.,
Attorneys for Defendants.

Pd. $10.00.

Register of Actions, Vol. VII.

Date.	Proceedings.
Feb. 10.	Petition for Writ of Review.
" 10.	Writ issued returnable March 4, 1922 at 10 A. M.
" 11.	Writ returned, served.
" 23.	Record from Industrial Commission.
" 24.	Demurrer.
Mar. 4.	Argued and Submitted. 15 days to File Briefs.
" 18.	Plaintiff's Briefs.
" 30.	Defendants' Briefs.
Apr. 17.	Plaintiff's Supplemental Briefs.
" 17.	Order entered permitting amendment of Petition for Review.
" 17.	Amendments to Petition for Review.
" 24.	Award of Commission Affirmed.
" 24.	Attorneys notified of decision.
May 13.	Petition for rehearing.
" 23.	Rehearing Denied.
" 23.	Attorneys notified of denial of Rehearing.
" 24.	Record returned to Industrial Commission.
" 26.	Remitted. $1.50 pd.

July 11. Record returned from Ind. Com. pursuant to order of Court.
" 18. Petition for Writ of Error.
" 18. Bond.
" 18. Assignments of Error.
" 18. Citation.
" 18. Allowance of Writ.
" 18. Writ of Error (with two copies).
" 18. Præcipe for Record for Supreme Court of U. S.

145 UNITED STATES OF AMERICA,
The State of Utah,
County of Salt Lake, ss:

I, H. W. Griffith, Clerk of the Supreme Court of the State of Utah, pursuant to a Writ of Error to said court wherein the Cudahy Packing Company of Nebraska is Plaintiff in Error and Mary Ann Parramore, as Widow and as Guardian, etc. and the Industrial Commission of Utah are Defendants in Error, do hereby return attached hereto a full, true and correct transcript of the proceedings had in said supreme court on a review of the award made by the said Industrial Commission of Utah in that certain matter wherein Mary Ann Parramore, as Widow and as Guardian, was Applicant and the said Cudahy Packing Company of Nebraska was Defendant before said Commission, as called for in the Præcipe for Record attached hereto and made a part hereof, which are all the proceedings had in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of Utah, this 31st day of July, A. D. 1922.

[Seal of State of Utah, Supreme Court.]

H. W. GRIFFITH,
Clerk.

29097.

146 In the Supreme Court of the United States, October Term, 1921.

No. 547

THE CUDAHY PACKING COMPANY OF NEBRASKA, a Corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, and The Industrial Commission of Utah.

Statement of Points Relied on and Directions as to Printing of Record.

To the Clerk of the Supreme Court of the United States:

Upon proceedings on error in this cause, the plaintiff in error intends to rely on the following points (which are more fully set forth in the assignments of error herein):

The decision of the Supreme Court of the State of Utah in affirming the award of the Industrial Commission of Utah.

I. Deprives petitioner of its property without due process of law, and

II. Denies to it the equal protection of the laws, because

1. The Commission was wholly without jurisdiction because the accident was not an industrial accident, and did not result from any hazard of petitioner's business, and was in no way connected with the employment of the deceased.

2. The Workmen's Compensation Act of Utah as construed and applied in this cause is arbitrary, oppressive and unreasonable, and contrary to principles of natural justice.

3. Section 3113 of said act, as con-trued and applied in this cause, is arbitrary, oppressive and unreasonable in that it authorized the award of compensation for death resulting from an accident not attributable to the employmen. of deceased, and not in any way connected therewith.

147 4. Whether or not the said Act is constitutional and valid, the action of the state court was arbitrary, unreasonable, unjust and oppres-ive, and in disregard of established law.

Plaintiff in error will contend that, under the Federal Constitution a state court or a state legislature may not compel an employer to become the general insurer of the lives and safety of his employees.

Plaintiff in error requests that the following parts of the record in said cause which it deems material to the consideration thereof, shall be printed for the use of court and counsel:

1. Petition for writ of review filed February 10, 1922, (excepting Exhibit A thereto appearing on pages 12 to 14½ inclusive). (Tr. pp. 2-12.)

2. Writ of review issued February 10, 1922, and return. (Tr. pp. 15, 16.)

3. Certified transcript of record as originally filed in the Supreme Court of Utah on February 23, 1922, certified to by the Secretary of the Industrial Commission of Utah. (Tr. pp. 17-81½.)

4. Demurrer to writ of review filed on February 24, 1922. (Tr. p. 82.)

5. Amendment to petition for review filed on April 17, 1922. (Tr. pp. 83-85.)

6. Minutes of Supreme Court of Utah in this cause on March 4, 1922, re-argument and leave to counsel to file briefs within 15 days. (Tr. 86.)

7. Order entered on April 17, 1922, allowing amendment to petition for review. (Tr. 86.)

8. Order of April 24, 1922, affirming the award of the Industrial Commission of Utah. (Tr. 86, 87.)

9. Opinion of Supreme Court of Utah affirming the award of the of the Industrial Commission of Utah filed April 24, 1922. (Tr. 88-93.)

10. Petition for rehearing filed May 13, 1922, with the exception of "Argument" beginning with the words "The plaintiff feels very strongly", at the beginning of the last paragraph on page 97, and ending with the words "10 Law Reports Annotated, 193" following the first paragraph on page 116. (Tr. pp. 94, 116.)

11. Order entered by Supreme Court of Utah on May 23, 1922, denying the petition for rehearing. (Tr. 117.)

12. Opinion of court filed May 23, 1922, denying petition for rehearing. (Tr. 118.)

13. Order entered July 11, 1922, relating to return of record from the Industrial Commission of Utah to the Clerk of the Supreme Court of Utah. (Tr. 119.)

148 14. Petition for writ of error from Supreme Court of United States to Supreme Court of Utah. (Tr., pp. 120, 123.)

15. Order allowing writ of error, etc. (Tr. 125.)

16. Original writ of error filed July 18, 1922. (Tr. 127, 128.)

17. Assignment of errors filed July 18, 1922. (Tr. pp. 130-132.)

18. Supersedeas bond filed July 18, 1922. (Tr. 134, 135.)

19. Citation and return filed July 18, 1922. (Tr. 137, 138.)

20. Præcipe for record filed July 18, 1922. (Tr. 140-142.)

21. Minutes of proceedings in Supreme Court of State of Utah. (Tr. 144.)

22. Certificate and return of Clerk of Supreme Court of Utah to writ of error. (Tr. 145.)

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for The Cudahy Packing Company of Nebraska, Plaintiff in Error.

149 & 150 Received a copy of the within Notice and Directions to the Clerk of the Supreme Court of the United States, this 14th day of August, 1922.

HARVEY C. CLUFF,
Attorney General of the State of Utah, Attorney for the Industrial Commission of Utah, a Defendant in Error,
By J. ROBT. ROBINSON,
Assistant Attorney General.

Received a copy of the within Notice and Directions to the Clerk of the Supreme Court of the United States, this 14th day of August, 1922.

FREDERICK C. LOOFBOUROW,
Attorney for Mary Ann Parramore, as Widow and as Guardian of the Persons and Estates of Owen Parramore, Ruth Parramore, and Luella Parramore, Minor Children of Joseph Parramore, Deceased, Defendants in Error.

151 [Endorsed:] No. —. In the Supreme Court of the United States, October Term, 1921. The Cudahy Packing Company of Nebraska, a corporation, vs. Mary Ann Parramore, as Widow and as Guardian of the persons and estates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, and The Industrial Commission of Utah. Statement of Points Relied on and Directions as to Printing of Record. Defrees, Buckingham & Eaton, Chicago.

152 & 153 [Endorsed:] File No. 29,097. Supreme Court U. S., October Term, 1922. Term No. 547. Cudahy Packing Co. of Nebraska, P. E. & Petitioner, vs. Mary Ann Parramore. Statement of errors, by Plaintiff in Error, and designation of parts of record to be printed, and acceptance of service of same. Filed Aug. 21st, 1922.

Office Sup
AUG
WM. R.

IN THE

Supreme Court of the United States.

OCTOBER TERM, [redacted] 1922

No. 547/107

THE CUDAHY PACKING COMPANY OF NEBRASKA,
A CORPORATION,
Petitioner,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH AND BRIEF IN SUPPORT OF PETITION.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for Petitioner.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

No. .....

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,

Petitioner,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH.

(Italics Ours.)

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The Cudahy Packing Company of Nebraska, a corporation (referred to herein as "Petitioner") respectfully shows:

Petitioner owns and operates a packing plant at North Salt Lake, Utah, about six miles north of Salt Lake City

and one-half mile west of the Salt Lake-Ogden highway running north and south. A county road runs west at right angles to this highway and extends past and beyond the plant. Between the Salt-Lake-Ogden highway and the plant this county road is crossed by one electric and two railroad lines. It is used by the public generally, including persons employed by others on the further side of the packing plant.

It appears without contradiction that, on August 9, 1921,

Joseph Parramore	A stationary engineer, working by the day,
on his way to work,	before his employment had begun,
while riding in a friend's automobile,	petitioner having no interest in it and in no way furnishing it,
on a public highway,	used by many persons other than the employees of petitioner, and not on petitioner's premises,
was struck at a railroad crossing,	on the main line, and not a part of the switching facilities of the plant,
by a railroad engine,	not owned or operated by, or in the service of petitioner,
and killed,	at a point on the county road about 100 feet from the entry to petitioner's plant.

The employment of deceased was within certain hours and within the plant. Outside of the plant and outside of those hours he had no duties.

In 1917, Utah adopted a Workmen's Compensation Act, which has been subsequently amended. Section 3113

of this act, as amended, provides compensation for "Every such employee who is killed by accident *arising out of*, or *in the course of*, his employment, wheresoever such injury has occurred," etc.

Mary Ann Parramore, as the widow, and as guardian of their three children, claimed compensation under this act. Upon a hearing The Industrial Commission of Utah (herein referred to as "Commission") awarded compensation and also funeral expenses and attorney's fees to be paid by petitioner.

Thereafter, petitioner sued out a writ of review in the Supreme Court of Utah (herein referred to as "state court") seeking to set aside this award. The state court affirmed the award. Petitioner's application for a rehearing was denied on May 23, 1922.

Petitioner shows here, as in the state court, that the action of the Commission and of the state court deprives it of its property without due process of law and denies to it the equal protection of the laws, contrary to Fourteenth Amendment to the Constitution of the United States, in that

(a) The Commission was wholly without jurisdiction because the accident was not an industrial accident, and did not result from any hazard of petitioner's business, and was in no way connected with its employment of the deceased.

(b) Whether or not the Workmen's Compensation Act of Utah is constitutional and valid, the action of the state court was arbitrary, unreasonable, unjust and oppressive, and in disregard of established law.

(c) Section 3113 of said act, as construed and applied in this cause, is arbitrary, oppressive and unreasonable in that it authorizes the award of compensation for death resulting from an accident not attributable to the employment of deceased, and not in any way connected therewith.

Petitioner submits that the judgment of the state court should be brought here for review by this court upon the errors assigned on the record herein.

Petitioner shows the following grounds for the allowance of a petition for certiorari:

1. Want of jurisdiction in the Commission to make its award.

2. The unconstitutionality (irrespective of the statute) of the action of the state court, depriving petitioner, as it does, of rights, privileges and immunities guaranteed to it under the Federal Constitution.

3. The unconstitutionality of the Workmen's Compensation Act of Utah as construed and applied in this case.

4. The great public importance of the questions involved.

Petitioner submits herewith a brief and an appendix of authorities in support of this petition. The transcript of record filed in this cause in the proceedings on error in this court is made a part of this petition.

It is vital that this court should at this time determine whether or not, under the Federal Constitution, state courts or state legislatures may compel employers to provide compensation for all injuries to employees wherever, whenever and however they may occur. May an employer under the Constitution be compelled to become the general insurer of the lives and safety of his employees? Petitioner contends that he may not be so compelled. This case involves that question.

WHEREFORE, petitioner prays that this Honorable Court will grant its writ of certiorari directed to the Supreme Court of the State of Utah requiring that the record of said case in said court entitled "The Cudahy Packing Company of Nebraska, a corporation, *vs.* Mary Ann Parramore, as widow and guardian of the persons and es-

tates of Owen Parramore, Ruth Parramore and Luella Parramore, minor children of Joseph Parramore, deceased, No. 3778," and its judgment and orders therein, may be certified to this court, and that this Honorable Court will thereupon proceed to correct the errors complained of, reverse the said judgment, and give to petitioner such other and further relief as the nature of the case may require and to the court may seem proper in the premises.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for Petitioner.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

L. H. Goss, being duly sworn, on oath says that he is the Assistant Treasurer of The Cudahy Packing Company of Nebraska, a corporation, the petitioner named in the foregoing petition, and its duly authorized agent in this behalf, that he has read the foregoing petition, that he has knowledge of the facts recited therein, and that the same are true, as he verily believes. This application is made in good faith and not for the purpose of delay.

L. H. Goss.

Subscribed and sworn to before me this 11th day of August, A. D. 1922.

WILLIAM J. QUIN,
(NOTARIAL SEAL) *Notary Public.*

My commission expires July 10, 1924.

CERTIFICATE.

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded in law and entitled to the favorable consideration of this court.

GEORGE T. BUCKINGHAM.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

No. .....

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,
Petitioner,

vs.

MARY ANN PARRAMORE, ETC.,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

This case presents a fundamental question: Under the Federal Constitution may a state court or a state legislature compel an employer to become the general insurer of the lives and safety of his employees?

Petitioner here contends that the decision of the state court, in affirming the award of the Commission, deprives petitioner of its property without due process of law, and denies to it the equal protection of the laws, because

I. The Commission was without jurisdiction;

II. Without reference to any statute, the action of the state court was arbitrary, unreasonable and unwarranted, and in disregard of established law.

III. The Utah Workmen's Compensation Act, as construed and applied in this case, is unconstitutional.

The death of the deceased did not result from any injury *arising out of* or received *in the course of* his employment.

The definition of the phrases "in the course of" and "arising out of," most widely accepted and followed, is that in McNicol's case, 215 Mass. 497, 102 N. E. 397, L. R. A. 1916-A, 306, 307:

> "An injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It 'arises out of' the employment when there is * * * a causal connection between the conditions under which the work is required to be performed and the resulting injury. * * * The causative danger must be peculiar to the work and not common to the neighborhood."

Broadly, the phrase "in the course of" refers to time, place and circumstance, and the phrase "arising out of" refers to cause and effect. Deceased met his death at a time when he was not employed and at a place other than that of his employment. There was absolutely no causal connection between his employment and the accident which ended his life. The accident was not an industrial accident but one which might have occurred to any member of the public on the public highway. Therefore, the court was without jurisdiction.

> *Bamberger Electric R. R.* v. *Ind. Com. of Utah*, 203 Pac. (Utah) 345, 346, and cases cited under Point I, Appendix.

It is one thing to make an employer liable for his *industrial* accidents; it is quite another thing to make him liable for *all other* accidents. Can an employer be

made liable, either by a state court or by a state legislature, for all injuries to his employees wherever, whenever and however they may occur? Such is the effect of the decision here complained of. It goes far beyond the legitimate scope of workmen's compensation acts and is a plain, palpable abuse of judicial and legislative authority.

The action of the state court contravenes the Federal Constitution and all accepted principles as to the application of workmen's compensation laws. There is a recent commentary (1921) on these laws in Volume 28 of Ruling Case Law, in which it is said that (pp. 804-805):

> "The compensation act, it has been very generally held, does not authorize an award in case of injury or death from a peril which is common to all mankind, or to which the public at large is exposed. The argument seems to be that if the workman were permitted to recover in such cases, he would enjoy privileges above those of the public generally, and in effect be insured against every sort of calamity, which is not the intention of the statute. At home or on the street he may meet with accident not arising out of or in the course of his employment. The act does not cover such cases. The employee gets up in the morning, dresses himself, and goes to work, because of his employment; yet if he meets with an accident before coming to the employer's premises or his place of work, that is not a risk of his occupation, but of life generally."

The state court points out that petitioner's liability, if any, must rest upon the fact that "at the date of the employment the danger incident to crossing the railroad tracks must have been in the contemplation of the parties." With as much propriety it might be said that it was contemplated that deceased would pass through his own door, along the sidewalk in front of his home, across the trolley line in the neighborhood and over the very numerous tracks along and across the Salt Lake-

Ogden Highway. It cannot be the law that petitioner would have been liable for an injury to an employee who had slipped on his own doorstep or on the sidewalk in front of his home, or who had been struck by an automobile or a trolley car in his own neighborhood. Such accidents are not a part of the hazard of the industry. Is petitioner responsible for all injuries resulting to any of its hundreds of employees who must inevitably each day cross numerous tracks within and without Salt Lake City? Where does the liability of the petitioner commence? Does it attach when the employee leaves his home, when he crosses the first track six miles from the plant, or when he reaches a point five, three or two miles from the plant? The premise relied on by the state court only emphasizes the arbitrary character of its decision.

There is no evidence to support a finding that the deceased met his death in an accident arising out of or in the course of his employment. Such a finding is unwarranted and wholly unauthorized.

The legal effect of evidence is a question of law, and a finding without evidence (as in this case) is beyond the jurisdiction of the Commission. It "comes under the Constitution's condemnation of all arbitrary exercise of power."

Int. Comm. Comm. v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 91, 92.

Since the Commission was without jurisdiction there can be no due process.

The provisions of the Federal Constitution protecting the rights and property of persons extend "to all acts of the state, whether through its legislative, its executive or its judicial authorities." The restraints of the Four-

teenth Amendment bind equally judges and legislatures. Neither can act in disregard of fundamental laws.

Scott v. *McNeal*, 154 U. S. 34, 45.

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226, 233, 235, and cases cited under Point IV, Appendix.

A judgment of a state court which deprives a person of property without due process amounts to a denial of a right secured by the Fourteenth Amendment, "even if it be authorized by statute." (*C. B. & Q. R. R.* v. *Chicago, supra.* See also *Scott* v. *McNeal, supra.*)

The state court has arbitrarily and capriciously attempted to construe and apply the Workmen's Compensation Act of Utah to a state of facts to which it can have no application.

Various workmen's compensation acts have been upheld by this court, but, in every case they have been so upheld on the theory that it is proper public policy to charge to an industry (rather than to the individual employees) the cost of those injuries *attributable to the inherent hazards of that industry.*

Arizona Employers Liability Acts, 250 U. S. 400, 420, 422, and cases cited under Point VII.

We do not here assail that principle. Our basic objection to the decision of the state court is that it imposes upon petitioner a liability for death from an accident not in any way attributable to the hazards of its business or industry, and wholly unconnected therewith.

Section 3113 in terms permits a recovery for death either "arising out of" *or* "in the course of" employment. The Utah act is, therefore, broader than any similar statute considered by this court. As construed and

applied, it permits a recovery for death from accidents foreign to employment. The result is an infringement of private property rights not justifiable on any ground of public policy.

The arbitrary and baseless character of both the decision and the statute recommends petitioner to the protection of this court.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for Petitioner.

APPENDIX.

Authorities Relied On by Petitioner in Support of Its Petition for Certiorari.

I.

The accident did not *arise out of* the employment of deceased, *or in the course* of his employment.

There was no employment of deceased by petitioner at the time of the accident. Death did not result from an industrial accident.

In re McNicols, 215 Mass. 497; 102 N. E. 697, L. R. A. 1916-A, 306.

Ruling Case Law (1921), Vol. 28, pp. 804, 805.

Bamberger Electric Railway Co. v. *Ind. Comm. of Utah* (Utah, 1921), 203 Pac. 345, 346.

Kowalek et al. v. *N. Y. Consol. R. Co.* (1920), 229 N. Y. 489; 128 N. E. 888, 889.

Re DeVoe, 218 N. Y. 318; 113 N. E. 256, 257, L. R. A. 1917-A, 250.

Tallon v. *Interborough Rapid Transit Co.* (N. Y. 1922), 134 N. E. 327.

Clapp's Parking Station v. *Ind. Acc. Comm. of Calif.* (1921), 197 Pac. 369, 370.

Orsinie v. *Torrance et al.* (Conn. 1921), 113 Atl. 924, 925.

Schultz et al. v. *Champion Welding & Mfg. Co. et al.* (1920), 184 N. Y. Sup. 719, 720.

II.

Whether there is any evidence to support the findings of the Commission is a question of law. A finding without evidence (as in this case) is beyond the jurisdiction of the Commission. It comes "under the Constitution's condemnation of all arbitrary exercise of power."

Int. Comm. Comm. v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 91, 92.

Bamberger Electric R. Co. v. *Ind. Comm. of Utah* (Utah, 1921), 203 Pac. 345, 346.

Clapp's Parking Station v. *Ind. Acc. Comm. of Calif.* (1921), 197 Pac. 369, 370.

III.

Since the Commission was without jurisdiction, its award deprived petitioner of its property without due process of law.

Scott v. *McNeal,* 154 U. S. 34, 46.

Int. Comm. Comm. v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 92.

IV.

The provisions of the Federal Constitution protecting the rights and property of persons extend "to all acts of the state, whether through its legislative, its executive or its judicial authorities." The restraints of the Fourteenth Amendment bind equally judges and legislatures. Neither can act in disregard of fundamental laws.

Scott v. *McNeal,* 154 U. S. 34, 45.

C. B. & Q. R. R. Co. v. *Chicago,* 166 U. S. 226, 233, 235.

Twining v. *New Jersey,* 211 U. S. 78, 90, 91.

Ex Parte Virginia, 100 U. S. 339, 346, 347.

Schofield, Constitutional Law and Equity (1921), pp. 5, 9, 21.

The Supreme Court of the United States and the Enforcement of State Law by State Courts, by Henry Schofield, 3 Ill. Law Review, 195.

V.

A judgment of a state court which deprives a person of property without due process amounts to a denial of a right secured by the Fourteenth Amendment "even if it be authorized by statute."

C. B. & Q. R. R. Co. v. *Chicago,* 166 U. S. 226, 241.

Scott v. *McNeal,* 154 U. S. 34, 45.

Schofield, Constitutional Law and Equity (1921), pp. 5-37.

VI.

Whether or not the statute is constitutional and valid, the action of the state court is so arbitrary, oppressive and unreasonable, and so contrary to law that it violates the Fourteenth Amendment to the Constitution of the United States.

Int. Comm. Comm. v. *Louisville & Nashville R. R. Co.,* 227 U. S. 88, 92.

Scott v. *McNeal,* 154 U. S. 34, 45, 46.

C. B. & Q. R .R. Co. v. *Chicago,* 166 U. S. 226.

Twining v. *New Jersey,* 211 U. S. 78.

Ex parte Commonwealth of Va., 100 U. S. 339, 346, 347.

Schofield, Constitutional Law and Equity (1921), pp. 5-37.

The Supreme Court of the United States and the Enforcement of State Law by State Courts, Henry Schofield, 3 Ill. Law Rev. 195.

In the matter of Kemmler, 136 U. S. 436, 448, 449.

VII.

Under the decisions of this court sustaining workmen's compensation acts, the basic idea is that death or injury must be a part of the hazard of the industry. The Utah act extends far beyond the legitimate scope of such acts.

Arizona Employers Liability Cases, 250 U. S. 400, 420, 422, and cases cited under Point VI.

Middleton v. *Texas Power & Light Co.,* 249 U. S. 152.

Mountain Timber Co. v. *Washington,* 243 U. S. 219, 239, 243.

Hawkins v. *Bleakley,* 243 U. S. 210.

New York Central R. R. Co. v. *White,* 243 U. S. 188, 202, 203.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 107

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,

Plaintiff in Error,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for Plaintiff in Error.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

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Defendants in Error.

ERROR TO SUPREME COURT OF STATE OF UTAH.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This writ of error brings to the attention of this court for review a final judgment of the Supreme Court of Utah (a court of last resort referred to herein as "Utah Court"), affirming an award by the Industrial Commission of Utah (sometimes referred to as "Commis-

sion"), that plaintiff in error pay compensation in the amount of approximately $5,000 to defendants in error.†

Plaintiff in error contends that

(a) the judgment of the Utah Court and the award of the Commission (irrespective of any statute) and

(b) the Utah Workmen's Compensation Act, as construed and applied in this case,

deprive it of rights guaranteed by the Fourteenth Amendment to the Federal Constitution and are, therefore, unconstitutional and void. These contentions were properly presented to the Utah Court* and are more fully indicated in the argument. (Brief, pp. 6-13.)

Fundamentally it is the position of plaintiff in error that

(1) the injury complained of did not arise out of an industrial accident, and

(2) that a Workmen's Compensation Law or an award of a Commission purporting to act under it, is unconstitutional and void when attempting to deal with a non-industrial accident.

Plaintiff in error, The Cudahy Packing Company of Nebraska (sometimes referred to herein as "Cudahy Company") owns and operates a packing plant at North Salt Lake, Utah, about six miles north of Salt Lake City and one-half mile west of the Salt Lake-Ogden highway running north and south. The Davis County road, a public highway, runs west at right angles to this highway and extends past and beyond the plant. Between the Salt Lake-Ogden highway and the plant this county road is crossed by one electric and two railroad lines. It is used by the public generally, including persons employed by others on the further side of the packing plant.

†The phrase "defendants in error" is used to refer only to individual defendants in error.

*See brief of plaintiff in error in opposition to motion to dismiss.

An examination of the record will show that the uncontradicted facts are, that on August 9, 1921,

Joseph Parramore,	a stationary engineer, working during the day (Rec., 18, 30, 38),*
on his way to work,	before his employment had begun (Rec., 26, 32, 42, 43),
while riding in a friend's automobile,	Cudahy Company having no interest in it and in no way furnishing it (Rec., 24, 31, 35, 54, 55, 70, 72),
on a public highway,	used by many persons other than the employees of Cudahy Company, and not on its premises (Rec., 26, 27, 39-43),
was struck at a railroad crossing,	on the main line, and not a part of the switching facilities of the plant (Rec., 23, 24, 54, 70, 72),
by a railroad engine,	not owned or operated by, or in the service of Cudahy Company (Rec., 24, 43, 44, 54),
and killed,	at a point on the county road about 100 feet from the entrance to Cudahy Company's plant. (Rec., 36, 37.)

The deceased resided in Salt Lake City. (Rec., 19.) He usually went to the Cudahy plant by way of the Bamberger Electric Railroad. On the morning in question he used what was for him an unusual conveyance. (Rec., 18.) His employment was within certain hours and within the plant. Outside of the plant and outside of those hours he had no duties.

Plaintiff in error did not furnish any means of transportation to its employees.

*The designation "Rec." refers to pages of the printed record.

The record indicates with certainty that:

Deceased came to his death in an accident.

(a) Not in the course of his employment,
(b) Not arising out of his employment,
(c) Not due to any action or neglect of plaintiff in error.
(d) Not attributable to any hazard of the business of plaintiff in error, but to a hazard to which the public generally was exposed.

The accident occurred at a time

(a) When deceased was not on the premises of plaintiff in error,
(b) Outside the hours of employment of deceased,
(c) When deceased was not engaged in any business of plaintiff in error.

The accident occurred on a public highway and resulted from a collision between an automobile and a railroad engine.

The automobile was

(a) Not owned, controlled or furnished by plaintiff in error.
(b) Not the means of transportation ordinarily employed by deceased,
(c) Not engaged in any business of plaintiff in error.

The railroad engine was

(a) Not owned or controlled by plaintiff in error,
(b) Being operated on the railroad right-of-way at an intersection with the public highway,
(c) Not engaged in any business of plaintiff in error.

There is no conflict of evidence as to any material fact.

Section 3113 of the Utah Workmen's Compensation Act, as amended, provides compensation for

"* * * every such employee who is killed by acci-

dent arising out of, or in the course of this employment, wheresoever such injury has occurred * * *," etc.*

Upon the foregoing state of facts Mary Ann Parramore, as the widow of Joseph Parramore, and as guardian of their three children, was awarded compensation by The Industrial Commission of Utah. The Supreme Court of Utah affirmed the award. (207 Pac. 148, Rec., 70.)

Errors Relied On.

We contend (as more fully appears from the assignments of error, Rec., 88-90), that the judgment of the State Court in affirming the award of the Commission deprives plaintiff in error of its property without due process of law, and denies to it the equal protection of the laws, and is, therefore, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States, in that

1. The Commission was wholly without jurisdiction to make the award because the accident was not an industrial accident, and was entirely outside the Utah statute, since it did not result from any hazard of petitioner's business and was in no way connected therewith.
2. Whether or not the Utah statute (or said Sec. 3113 thereof) is constitutional and valid, the action of the State Court was arbitrary, unreasonable, unjust and oppressive, unsupported by evidence and in disregard of established law since it acted contrary to the undisputed evidence and upon an assumption unsupported in facts.
3. Section 3113 of the Utah statute as construed and applied in this cause is arbitrary, oppressive and unreasonable in that it authorizes the award of compensation for death resulting from an accident not attributable to the employment of deceased and not in any way connected therewith.

*Sec. 3113, Chap. 100, Laws of Utah, 1917 as amended by Chap. 63, Laws of Utah, 1919, and further amended by Chap. 67, Laws of Utah, 1921. This section is set forth in full in the appendix.

BRIEF OF ARGUMENT.*

Plaintiff in error challenges the arbitrary action of

I. The Utah Court and Commission, and

II. The Utah Legislature.

In the event that this court sustains our contention that the action of the Utah Court and Commission is void for the constitutional reasons which we urge, then, of course, the constitutionality of the Utah Compensation Act is not material. But to the extent that it is assumed in this court that the Supreme Court of Utah has properly construed the statute, it is also our contention that Section 3113 of the Utah statute as so construed and applied is unconstitutional and void to the extent that it is held to include compensation arising out of claims such as presented by the facts of this case. It will be seen that our contentions are not inconsistent. With the foregoing in mind, we contend that the Commission acted without jurisdiction and in disregard of law, and the court which affirmed its award did so arbitrarily and without warrant.

Section 3113 of the Utah statute to the extent it is construed and applied to the facts in this case is unconstitutional and void.

This case presents at least two fundamental constitutional questions:

(a) Is the award of a Commission (or a court) valid when it acts outside of its own jurisdiction, contrary to the undisputed evidence before it, and in arbitrary disregard of established law.

(b) Under the Federal Constitution and the de-

*Authorities in support of contentions of plaintiff in error are cited in the Appendix to this brief.

cisions of this court, is a compensation act of a state valid insofar as it requires an employer to pay compensation for accidents outside of its industrial risk.

I.

THE ARBITRARY ACTION OF THE COURT IN AFFIRMING THE AWARD OF THE COMMISSION.

The provisions of the Federal Constitution protecting the rights and property of persons, extend "to all acts of the state, whether through its legislative, its executive or its judicial authorities." The restraints of the Fourteenth Amendment bind equally judges and legislatures. Neither can act in disregard of fundamental law. (See Authorities, Point VIII, Appendix.)

A judgment of a state court which deprives a person of property without due process amounts to a denial of a right secured by the Fourteenth Amendment "even if it be authorized by statute." (See Authorities, Point IX, Appendix.) This is true whether or not the statute is valid.

The test to be applied to the judgment of the court is not what the court says, but what the court does. Even if a court lays down correct principles it may not then, upon undisputed facts, arbitrarily disregard them.

Under the Utah statute, the Industrial Commission does not have a general jurisdiction. It may award compensation for industrial accidents arising out of the relation of employer and employe, but that is the limit of its jurisdiction. (Sec. 3113, Utah Statute, this brief, pp. 4-5.)* The Commission has no jurisdiction over ordinary tort claims. In the instant case the Commission

*Secs. 3110-3113, 3130, Chap. 100, Laws of Utah, 1917, as amended by Chap. 63, Laws of Utah, 1919, and further amended by Chap. 67, Laws of Utah, 1921. These sections are set forth in the appendix.

had no more jurisdiction over the claim of defendants in error than it would have had if deceased had been struck down by a motor truck on the streets of Salt Lake City. Proximity alone could not give it jurisdiction or fasten liability on plaintiff in error.

The action of the Utah court in affirming the award of the Commission was arbitrary and baseless, because the death of the deceased did not result from any injury *arising out of*, or received *in the course of, his employment.*

The definition of the phrases "in the course of" and "arising out of," most widely accepted and followed, is that in McNicol's case, 215 Mass. 497, 102 N. E. 697. L. R. A. 1916-A, 306, 307:

> "* * * An injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It arises 'out of' the employment when there is * * * a causal connection between the conditions under which the work is required to be performed and the resulting injury * * * The causative danger must be peculiar to the work and not common to the neighborhood. * * *"

Broadly, the phrase "in the course of" refers to time, place and circumstance, and the phrase "arising out of" refers to cause and effect. Deceased met his death at a time when he was not employed and at a place other than that of his employment. There was absolutely no causal connection between his employment and the accident which ended his life. The accident was not an industrial accident but one which might have occurred to any member of the public on the public highway. Therefore, the court, as well as the Commission, was without jurisdiction.

> *Bamberger Electric R. Co.* v. *Ind. Com. of Utah,* 203 Pac. (Utah) 345, 346, and cases cited under Points I and V, Appendix.

It is one thing to make an employer liable for his industrial accidents; it is quite another thing to make him liable for all other accidents. Can an employer be made liable, either by a state court or by a state legislature, for all injuries to his employes wherever, whenever and however they may occur? Such is the effect of the decision here complained of. It goes far beyond the legitimate scope of workmen's compensation acts and evidences a plain, palpable abuse of judicial and legislative authority.

The action of the state court contravenes the Federal Constitution and all accepted principles as to the application of workmen's compensation laws. There is a recent commentary (1921) on these laws in Volume 28 of Ruling Case Law, in which it is said that (pp. 804-805):

> "The compensation act, it has been very generally held, does not authorize an award in case of injury or death from a peril which is common to all mankind, or to which the public at large is exposed. The argument seems to be that if the workman were permitted to recover in such cases, he would enjoy privileges above those of the public generally, and in effect be insured against every sort of calamity, which is not the intention of the statute. At home or on the street he may meet with accident not arising out of or in the course of his employment. The act does not cover such cases. The employee gets up in the morning, dresses himself, and goes to work, because of his employment; yet if he meets with an accident before coming to the employer's premises or his place of work, that is not a risk of his occupation, but of life generally."

The Commission based its award upon the theory that Cudahy Company was dependent upon the shipping facilities furnished by the railroad. (Rec., 55, 72.) The Utah court disregarded this theory and pointed out that the liability of plaintiff in error, if any, must rest upon

the fact that "at the date of the employment the danger incident to crossing this railroad track * * * must be held to have been within the contemplation of the parties * * *." (Rec., 72.) There was no evidence to support the conclusions of the Commission or the Utah court. With as much propriety it might be said that it was contemplated that dedeceased would pass through his own door, along the sidewalk in front of his home, across the trolley line in the neighborhood and over the very numerous tracks along and across the Salt Lake-Ogden Highway. It cannot be the law that plaintiff in error would have been liable for an injury to an employee who had slipped on his own doorstep or on the sidewalk in front of his home, or who had been struck down by an automobile or a trolley car in his own neighborhood. Such accidents are not a part of the hazard of the industry and from a constitutional standpoint the hazard of the industry is the limit to which the employer may be required to pay compensation. The premise relied on by the state court only emphasizes the arbitrary character of its decision.

In *Myles Salt Company* v. *Iberia Drainage District,* 239 U. S. 478, the Supreme Court of Louisiana sustained the action of a police jury, which pursuant to statute, had included in a drainage district property not benefited, and levied a special drainage tax on such property. On writ of error in this court an owner of property not benefited contended that the action of the police jury deprived it of property without due process. No question was raised as to the validity of any statute. The Court said:

"There is no dispute about the state laws (p. 479) * * *. The ground of the attack is that the dis-

> trict for * * * which the tax was levied was of no benefit to plaintiff's land and was formed only for the benefit of the other lands, was an unconstitutional usurpation of authority, and was and is an effort to take plaintiff's property without due process of law * * * (p. 480) * * * There is no doubt that a Federal right was asserted (p. 483). * * * And such decision, it is further contended was a decision upon the State Law and presents no Federal question, the statute of the state not being attacked. We cannot concur in the contention, it is true the law of the state as written is not attacked but the law as administered and justified by the Supreme Court of the State is attacked and it is asserted to be a violation of the Constitution of the United States. The question presented is Federal and the motion to dismiss is denied." (p. 484.)

In the decision on the merits in the *Myles* case this court recognized the right of the state to constitute drainage districts but held that the power to do so had been "arbitrarily exerted" and, for that reason, reversed the judgment of the Supreme Court of Louisiana.

There is no evidence to support a finding that the deceased met his death in an accident arising out of or in the course of his employment. Such a finding is unwarranted and wholly unauthorized.

The legal effect of evidence is a question of law, and a finding without evidence (as in this case) is beyond the jurisdiction of the Commission. It "comes under the Constitution's condemnation of all arbitrary exercise of power."

> *Int. Comm. Comm.* v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 91, 92.

The state court, in affirming the award of the Commission, has arbitrarily and capriciously attempted to construe and apply the Workmen's Compensation Act of

Utah to a state of facts to which it can have no application.

Since the Commission (and the court as well) was without jurisdiction there can be no due process.

II.

UNCONSTITUTIONALITY OF UTAH STATUTE AS CONSTRUED AND APPLIED.

The decision of the Utah court involved the construction and the application of the Utah statute and particularly Section 3113 thereof (set forth in this brief, pp. 4, 5). Whether or not a statute is unconstitutional depends upon its construction and application in a particular case. A statute may be valid as applied to one set of facts and invalid as applied to another.

> *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, and see cases cited under Point II, Appendix.

The Utah statute as construed and applied in this case operated to deprive the plaintiff in error of its property without due process of law, because pursuant to that statute, it was ordered to pay compensation for an injury not in any way incident to its business and for which it could not and should not have any responsibility or liability.

The constitutionality of workmen's compensation acts has been uniformly upheld by this court. But, in every case these acts have been so upheld on the theory that it is proper public policy to charge to an industry (rather than to the individual employees) the cost of those in-

juries *attributable to the inherent hazards of that industry.*

> *Arizona Employers Liability Acts,* 250 U. S. 400, 420-422, and cases cited under Point XI, Appendix.

The judgment here assailed lies outside that principle and we are before this court for that reason. Our basic objection to the decision of the state court is that it imposes upon plaintiff in error a liability for death from an accident not in any way attributable to the hazards of its business or industry, and wholly unconnected therewith.

The principle upon which the decisions of this court have been based is indicated in the following language from the opinion in *New York C. R. Co.* v. *White,* 243 U. S. 188, 37 Sup. Ct. Rep. 247. This court said (243 U. S. 202, 203):

> "Of course, we cannot ignore the question whether the new arrangement is arbitrary and unreasonable, from the standpoint of natural justice. Respecting this, it is important to be observed that the act applies only to disabling or fatal personal injuries received in the course of hazardous employment in gainful occupation."

Section 3113 in terms permits a recovery for death either "arising out of" *or* "in the course of" employment. The Utah act is, therefore, broader than any similar statute considered by this court. As construed and applied, it permits a recovery for death from accidents foreign to employment. The result is an infringement of private property rights not justifiable on any ground of public policy.

Here, as in the *Myles'* case, there is presented to this court an instance of power "arbitrarily exerted."

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for Plaintiff in Error.

APPENDIX.

POINTS AND AUTHORITIES.

I.

The accident did not arise out of the employment of deceased, or in the course of his employment.

There was no employment of deceased by plaintiff in error at the time of the accident. Death did not result from an industrial accident.

In re McNicol, 215 Mass. 497; 102 N. E. 697, L. R. A. 1916-A, 306.

Ruling Case Law (1921), Vol. 28, pp. 804, 805.

Bamberger Electric Railway Co. v. *Ind. Comm. of Utah* (Utah, 1921), 203 Pac. 345, 346.

Kowalck et al. v. *N. Y. Consol. R. Co.* (1920), 229 N. Y. 489; 128 N. E. 888, 889.

Re De Voe, 218 N. Y. 318; 113 N. E. 256, 257, L. R. A. 1917-A, 250.

Tallon v. *Interborough Rapid Transit Co.* (N. Y. 1922), 134 N. E. 327.

Clapp's Parking Station v. *Ind. Acc. Comm. of Calif.* (1921), 197 Pac. 369, 370.

Orsinie v. *Torrance et al.* (Conn. 1921), 113 Atl. 924, 925.

II.

A statute may be valid as applied to one set of facts and invalid as applied to another. The question to be

determined is whether or not the statute as construed and applied is valid.

Dahnke-Walker Milling Co. v. *Bondurant,* 257 U. S. 282, 42 Sup. Ct. Rep. 106, 108; 66 L. Ed. 114, 116.

Merchants National Bank v. *Richmond,* 256 U. S. 635, 641; 41 Sup. Ct. Rep. 619; 65 L. Ed. 1135.

III.

The contention that there is no evidence to support the action of the State Court raises a purely legal question.

Truax v. *Corrigan,* 257 U. S. 312; 66 L. Ed. 132, 134, 135, 42 Sup. Ct. Rep. 147.

Merchants Natl. Bank v. *Richmond,* 256 U. S. 635, 641, 41 Sup. Ct. Rep. 619, 65 L. Ed. 1135.

Jones National Bank v. *Yates,* 240 U. S. 541, 522, 553, 36 Sup. Ct. Rep, 429; 60 L. Ed. 788.

IV.

A finding upon undisputed facts is a finding of law, even though it may be styled a finding of fact. This rule is of familiar application in compensation cases.

Bates & Rogers Cons. Co. v. *Allen,* 183 Ky. 815; 210 S. W. 467, 471.

Hochspeier v. *Ind. Bd.* 278 Ill. 523; 116 N. E. 121; L. R. A. (1918 F.) 227.

Glatzl v. *Stumpp* (N. Y.), 114 N. E. 1053, 1054.

In re Fisher, 220 Mass. 581; 108 N. E. 361.

V.

Whether there is any evidence to support the findings of the Commission is a question of law. A finding without evidence (as in this case) is beyond the jurisdiction

of the Commission. It comes "under the Constitution's condemnation of all arbitrary exercise of power."

Int. Comm. Comm. v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 91, 92; 33 Sup. Ct. Rep. 185; 57 L. Ed. 431.

Bamberger Electric R. Co. v. *Ind. Comm. of Utah* (Utah, 1921), 203 Pac. 345, 346.

Clapp's Parking Station v. *Ind. Acc. Comm. of Calif.* (1921), 197 Pac. 369, 370.

VI.

In determining the legal effect of facts in evidence as a deprivation of plaintiff in error's rights under the Fourteenth Amendment, this court is

> "at as full liberty to consider them as was the State Supreme Court. * * * This court must analyze the facts as averred and draw its own inferences as to their ultimate effect and is not bound by the conclusions of the State Supreme Court in this regard."

Truax v *Corrigan*, 257 U. S. 312; 66 L. Ed. 132, 134, 135; 42 Sup. Ct. 127.

VII.

Since the Commission was without jurisdiction, its award deprived plaintiff in error of its property without due process of law.

Scott v. *McNeal*, 154 U. S. 34, 46; 14 Sup. Ct. Rep. 1108; 38 L. Ed. 896.

Int. Comm. Comm. v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 92; 33 Sup. Ct. Rep. 185; 57 L. Ed. 431.

VIII.

The provisions of the Federal Constitution protecting the rights and property of persons extend "to all acts of the state, whether through its legislative ts executive or its judicial authorities." The restraints of the Fourteenth Amendment bind equally judges and legislatures. Neither can act in disregard of fundamental laws.

Myles Salt Company v. *Iberia Drainage District*, 239 U. S. 478; 36 Sup. Ct. Rep. 204; 60 L. Ed. 392.

Scott v. *McNeal*, 154 U. S. 34, 45; 14 Sup. Ct. Rep. 1108; 38 L. Ed. 896.

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226, 233, 235; 17 Sup. Ct. Rep. 581; 41 L. Ed. 979.

Twining v. *New Jersey*, 211 U. S. 78, 90, 91; 29 Sup. Ct. Rep. 14; 53 L. Ed. 97.

Ex parte Virginia, 100 U. S. 339, 346, 347; 25 L. Ed. 676.

Schofield, Constitutional Law and Equity (1921), pp. 5, 9, 21.

IX.

A judgment of a state court which deprives a person of property without due process amounts to a denial of a right secured by the Fourteenth Amendment "even if it be authorized by statute."

Myles Salt Company v. *Iberia Drainage District*, 239 U. S. 478; 36 Sup. Ct. Rep. 204; 60 L. Ed. 392.

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226, 241; 17 Sup. Ct. Rep. 581; 41 L. Ed. 979.

Scott v. *McNeal*, 154 U. S. 34, 45; 14 Sup. Ct. Rep. 1108; 38 L. Ed. 896.

Schofield, Constitutional Law and Equity (1921), pp. 5-37.

X.

Irrespective of the validity of the statute, the action of the Utah court was arbitrary, oppressive and unreasonable, and contrary to law, and therefore it violates the Fourteenth Amendment to the Constitution of the United States.

Myles Salt Company v. *Iberia Drainage District,* 239 U. S. 478; 36 Sup. Ct. Rep. 204; 60 L. Ed. 392.

C. B. & Q. R. R. Co. v. *Chicago,* 166 U. S. 226, 241; 17 Sup. Ct. Rep. 581; 41 L. Ed. 979.

Scott v. *McNeal,* 154 U. S. 34, 45; 14 Sup. Ct. Rep. 1108; 38 L. Ed. 896.

Prudential Insurance Company of America v. *Check* (1922), 259 U. S. 530; 42 Sup. Ct. Rep. 516, 523, 524; 66 L. Ed. 626, 634, 635.

Schofield, Constitutional Law & Equity (1921), 5-37.

Twining v. *New Jersey,* 211 U. S. 78; 29 Sup. Ct. Rep. 14; 53 L. Ed. 97.

Exparte Virginia, 100 U. S. 339, 346, 347; 100 U. S. 339; 25 L. Ed. 676.

XI.

This court has uniformly upheld the constitutionality of Workmen's Compensation Acts, but solely on the principle that death or injury must be a part of the hazard of the industry. The Utah act as construed and applied extends far beyond this principle.

Arizona Employers Liability Cases, 250 U. S. 400, 420, 422; 39 Sup. Ct. Rep. 553; 63 L. Ed. 1058.

Middleton v. *Texas Power & Light* Co. 249 U. S. 152; 39 Sup. Ct. Rep. 227; 63 L. Ed. 527.

Mountain Timber Co. v. *Washington*, 243 U. S. 219, 239, 243; 37 Sup. Ct. Rep. 260; 61 L. Ed. 685.

Hawkins v. *Bleakley*, 243 U. S. 210; 37 Sup. Ct. Rep. 255; 61 L. Ed. 678.

New York Central R. R. Co. v. *White*, 243 U. S. 188, 202, 203; 37 Sup. Ct. Rep. 247; 61 L. Ed. 667.

SECTIONS OF UTAH WORKMEN'S COMPENSATION LAW OF STATE OF UTAH, REFERRED TO IN BRIEF OF PLAINTIFF IN ERROR.

Chap. 100, *Laws of Utah,* 1917, *as Amended by Chap.* 67, 63 *Laws of Utah,* 1919, *and Further Amended by Chap.* 67, *Laws of Utah,* 1921.

SECTION 3110. (As amended by Ch. 63, Laws of 1919.) The following shall constitute employers subject to the provisions of this title:

(1) The state and each county, city, town and school district therein.

(2) Every person, firm and private corporation, including every public utility, that has in service three or more workmen or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, except agricultural laborers and domestic servants; provided, that employers who have in service less than three employes and employers of agricultural laborers and domestic servants shall have the right to come under the terms of his title by complying with the provisions thereof, and all the rules and regulations of the commission.

The term "regularly," as herein used, shall include all employments, whether continuous throughout the year or for only a portion of the year. It means all employments in the usual course of the trade, business, profession or occupation of an employer.

Where any employer procures any work to be done wholly or in part for him by a contractor over whose work he retains supervision or control, and the work so procured to be done is a part or process in the trade or business of said employer, then such contractor and all persons employed by him, and all sub-contractors under him, and all persons employed by any such sub-contractors, shall be deemed, within the meaning of this section, employes of such original employer. Any person, firm or corporation engaged in the performance of work as an independent contractor, shall be deemed an employer within the meaning of this section. The words "inde-

pendent contractor," as herein used, is defined to be any person, association or corporation engaged in the performance of any work for another, and while so engaged, is independent of the employer in all that pertains to the execution of the work is not subject to the rule or control of the employer, is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design.

SECTION 3111. (As amended by Ch. 63, Laws of 1919.) The terms "employe," "workmen" and "operative," as used in this title, shall be construed to mean:

(1) Every person in the service of the state, and of every county, city, town or school district, including regular members of lawfully constituted police and fire departments of cities and towns, under any appointment or contract of hire, express or implied, oral or written, except any elective official of the state, or of any county, city, town or school district therein, or other official receiving more than $2,400.00 per year salary.

(2) Every person, except agricultural laborers and domestic servants in the service of any employer, as defined in subdivision 2 of section 3110, who employs three of more workmen or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person whose employment is but casual and is not in the usual course of trade, business or occupation of his employer.

All lessees in mines or of mining property, and the employes and contractors of all such lessees who are engaged in the performance of work which is a part or process in the business that is being actually conducted by the lessor, and over whose work the lessor retains supervision, or control, shall be deemed, within the meaning of this section, employes of such lessor drawing such wages as are paid employes for similar work; provided, that the lessor may deduct from the proceeds of ores mined by the lessees the premium required to be paid.

SECTION 3112. (As amended in 1919 and 1921.) The following terms as used in this title shall be construed as follows:

(1) The term "order," shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such commission.

(2) The term "general order," shall mean and include such order as applied generally throughout the State to all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(3) The term "welfare," shall mean and include comfort, decency and moral well-being.

(4) The term "safe" and "safety," as applied to any employment or a place of employment, shall mean such freedom from danger to the life, health, safety or welfare of employes as the nature of the employment will reasonably permit.

(5) The words "personal injury by accident arising out of or in the course of employment" shall include an injury caused by the wilful act of a third person directed against an employe because of his employment.

They shall not include a disease except as it shall result from the injury.

(6) The term "compensation" shall mean the compensation and benefits provided for in this title.

(7) The term "award" shall mean the finding or decision of the commission as to the amount of compensation due any injured or the dependents of any deceased employe.

(8) The term "average weekly earnings" shall mean the average weekly earnings arrived at by rule provided in Section 3142.

SECTION 3113. (As amended by Ch. 63, Laws of 1919.) Every employe mentioned in Section 3111, who is injured and the dependents of every such employe who is killed by accident arising out of, or in the course of his employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, shall be entitled to receive, and shall be paid such compensation for loss sustained on account of such injury or death,

and such medical, nurse and hospital services and medicines, and such amount of funeral expense, in case of death, as is herein provided.

SECTION 3130. (As amended by Ch. 63, Laws of 1919.) Any employe whose employer has failed to comply with the provisions of Section 3114 hereof, who has been injured by accident arising out of or in the course of his employment, wheresoever such injury has occurred, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceeding against his employer by civil action in the courts, as provided in the last preceding section, file his application with the commission for compensation in accordance with the terms of this title, and the commission shall hear and determine such application for compensation in like manner as in other claims before the commission; and the amount of compensation which said commission may ascertain and determine to be due to such injured employe, or his dependents in case death has ensued, shall be paid by such employer to the persons entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the commission.

INDEX

	Page
Facts found by the Industrial Commission	1
Argument upon the facts	3
The Utah Statute	7
Citations	10
Conclusion	18
Opinion of the Supreme Court of Utah	19

CASES CITED IN BRIEF

	Page
Bradbury's Workmen's Compensation Law, Vol. 1 Page 398	7
Bradbury's Workmen's Compensation Law, Vol. 1 Page 404	9
City of Milwaukee vs. Miller, 154 Wis. 652	9
Chaboya vs. Becker, 7 Cal. Ind. Com. 690 (1919), 12 N. & C. C. C., p. 622	14
Constantine vs. Commission, L. R. A. 1916, "A" p. 330	18
Judson Mfg. Co. vs. Industrial Accident Commission, 181 Cal. 300	15
Lumbermen's Reciprocal Ass'n vs. Behnken et al., 226 S. W. 155, 156	16
Madden vs. Whitman, N. C. C. Cases, Vol. 12, p. 556. (38 N. J. L. J. 113)	13
Moore vs. Manchester, etc. Butterworth's Workmen's Compensation Cases, Vol. 3, p. 527	13
Procaccino vs. E. Horton & Sons, 111 Atl. Rep. 595	15
Stoughton vs. Mathiason, etc., N. C. C. Cases, Vol. 12, p. 390	12
Sundine vs. Dunn, et al., (Mass.) 105 North Eastern, 433	14
Walsh vs. Cullen, L. R. A. (N. S.) Vol. 18, p. 913	11

In the Supreme Court
of the United States

October Term, 1923
No. 107

THE CUDAHY PACKING COMPANY OF NEBRASKA,
a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH

BRIEF OF DEFENDANTS IN ERROR

BRIEF OF DEFENDANT IN ERROR

FACTS FOUND BY THE INDUSTRIAL COMMISSION:

"That Joseph Parramore, on the 9th day of August, 1921, was fatally injured by accident at or near their plant, located about six miles north of Salt Lake City, Utah, while employed by the Cudahy Packing Company of Nebraska;

"That on said date the Cudahy Packing Company had in their employ in the State of Utah, three or more workmen; that the Cudahy Packing Co. of Nebraska is known and designated as a self-insurer,

paying compensation direct to its injured employes or their dependents;

"That on said date, three workmen, including Mr. Parramore, all of whom lived in Salt Lake City, were traveling in an automobile owned by one of the workmen, approaching the plant where they were employed;

"That while crossing the main line tracks of the Denver & Rio Grande Western Railroad Company, which tracks were alongside the land upon which is located the plant of the Cudahy Packing Company, the automobile in which they were riding was struck by an engine of the railroad company and Joseph Parramore thrown against a post in the right of way fence, which fence also enclosed the property of the Cudahy Packing Company, and was instantly killed;

"That within half a mile of the plant of the Cudahy Packing Company, where Mr. Parramore was employed, it was necessary that Mr. Parramore pass over the main line tracks of the Bamberger Electric Railway Company and the main line tracks of the Oregon Short Line Railroad Company, and the main line tracks of the Denver & Rio Grande Western Railroad Company, and three side tracks and transfer tracks between these various lines of railroad;

"That the Cudahy Packing Company furnished its employees no method of travel or conveyance in coming to or leaving the plant and most of the employees of the company lived in such localities; that it was necessary that they should travel to and from their work, the road which crossed the railroad tracks above mentioned;

"That the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant;

"That the death of Mr. Parramore occurred about seven minutes before the time at which he was to commence work; that the Cudahy Packing Company does not furnish at its plant either board or lodging;

"That there are no public conveyances that could carry employees directly to the plant;

"That employees who went to their work by street cars or by the Bamberger Electric Railway Company must cross the railroad tracks above mentioned, either on foot or by private conveyance;

"That Mr. Parramore, at the time he was killed, was using the most direct and practicable route to the plant of the Cudahy Packing Company and the one ordinarily travelled by the majority of the employees, and by all the employees residing in Salt Lake City."

ARGUMENT UPON THE FACTS

This is not the ordinary case of a workman traveling along a public street on his way to his place of work. In the ordinary case the workman has his choice of roads—he may choose the safer way or he may, for his own convenience, take a more dangerous way and if he is injured before reaching the premises of the employer, the cause of his injury is not at all incidental to the industry in which he is engaged. The case at bar is far removed from that.

The factory of the Cudahy Packing Company is located in immediate proximity to three main line railroad tracks. It is evident, and the Industrial Commission affirmatively so found "That the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the operation of the plant." All these railroad tracks lie immediately to the east of the plant.

The tracks and the traffic moving upon them, are a constant menace to the company's employees. To say that after the employee has passed the factory gate at night or before he has reached it in the morning he is a part and parcel of the public, and that the menace of those tracks and the moving traffic upon them is not a hazard of occupation in that industry is to grasp at the shadow and ignore the substance, for plainly, if the employee were not engaged in that particular employment, he would not be subjected to that risk.

The tracks in question are not ordinary street car tracks and are not ordinary spurs or side tracks—they are main line tracks of both the O. S. L. and the D. & R. G. W. R. R. and the Bamberger Electric lines.

About one hundred (100) persons are employed at this plant, Some, less than one-half, live in Salt Lake City about six (6) miles distant and many to the north. Employees

living beyond walking distance, whether in Salt Lake City or to the north, can travel to the plant by street car, by Bamberger Electric, or by auto. All who travel by street car, Bamberger Electric or auto from Salt Lake City or the north and those who walk, in the last half mile before reaching the plant, must either walk or drive across main line railroad tracks, upon which trains are constantly passing, and four connecting and side tracks in more or less common use.

It is idle to say that the employee, upon leaving the factory gate, has a choice of routes home and for that reason the employer has no control over him and therefore no responsibility for injuries to him. In this case, the employee has no choice of roads from the plant. He must travel the east and west road across the main line railroad tracks. In fact the contract of employment clearly contemplates that the employee must cross those main line railroad tracks at least two times each day. It is an incident well known and understood by both parties when the contract of employment is made.

No provision is made at the factory to furnish either meals or lodging. Employees must approach the factory at the beginning of each shift and must leave it at the conclusion of the shift, and they must approach and leave across these main line railroad tracks. The road, east and west, from the Salt Lake and Ogden highway to the factory,

is the only practicable route by which the employees can reach and leave the factory. No attempt whatever is made by the factory to protect employees from injury while approaching and leaving and no private way is furnished.

In other words, the immediate proximity of active railroad lines forms a constant menace to the lives of the employees. The only way the employees can avoid the menace is to give up their employment. If they continue to work at this factory, they must be subjected to this menace. Under these circumstances, the risk is peculiar and incidental to the employment, and injury, such as occurred in this case, arises out of the employment.

In this case, Mr. Parramore was killed about seven minutes before his shift started, so close to the premises of the Company that the Superintendent stated that from his observation of the body of the deceased and of the demolished automobile immediately after the accident, it appeared to him that Mr. Parramore had been thrown by the force of the engine against a post in the line fence of the Cudahy Packing Company and bounced back about three feet into the right of way of the railroad. He was "almost within reach" of his actual place of work, and undoubtedly had the fence post not been there, he would have been thrown by the force of the accident upon the premises of the Company.

THE UTAH STATUTE.

In the original Industrial Commission Law of Utah (Section 3113, Compiled Laws of Utah, 1917), provision was made for the payment of compensation as follows:

> "If a workman receives personal injury by accident *arising out of and in the course of his employment* his employer or the insurance carrier shall pay compensation in the amounts and to the persons hereinafter specified."

The words "arising out of and in the course of his employment" were taken from the State and foreign laws then in existence. Practically the same wording was then and still is a part of the English and Canadian compensation statutes and of the very great majority of the compensation statutes in the various States of the Union. These words have been given very specific meaning and are undoubtedly the basis of decision generally where the right to compensation is in issue.

In order to be compensable, the accident must not only have "arisen out of" the employment, but it must also have occurred "in the course of" the employment.

Bradbury's Compensation Law, Vol. 1, page 398.

The words "in the course of" the employment are susceptible to two different constructions. The first is that the injury in question occurred during the working hours, that is, while performing the service contemplated by the

employment during the actual shift. The other and broader construction is, that the relation of master and servant must exist at the time of the accident in order that the injury be compensable. This latter construction is of course, fundamental because, if that relation does not exist, the statute creating the Industrial Commission has no application at all. The second construction is the one generally adopted by the Courts and so the actual period, during which injuries that occur to the servant are compensable, is somewhat extended.

Ordinarily the employment is carried on upon the premises of the employer and the cases generally hold that a compensable injury must not only have "arisen out of" and "in the course of" the employment, but must have occurred *upon the premises* of the employer. Many cases so holding can be marshalled, all based upon the form of statute originally a part of the Utah law.

However, under this form of statute, the injustice of such limitations was manifestly apparent to the various commissions and courts and exceptions to its strict application were made. For this reason, text writers came to be very cautious in stating the rule.

> "The rule under the Common Law Employers Liability Act and Workmen's Compensation Statutes seems to be that, *usually*, an employer is not liable for injuries to an employee before he reaches or after he departs from the employer's premises,

unless the employee is riding upon a conveyance, furnished by the employer and which conveyance is supplied under an agreement, express or implied, by the employer, as a part of the contract of employment."

Bradbury's Workmen's Compensation Law, Vol. 1, p. 404.

The purpose of the compensation law is:

"to eradicate, utterly, the injustice to employers and employees, and the public as well, of the old system, and to substitute in its place an entirely new one based upon the highest conception of man's humanity to man and obligation to industry upon which all depend; recognizing the aggregate of its attending accidents as an element of cost to be liquidated and balanced in money in the course of consumption."

City of Milwaukee vs. Miller, 154 Wis. 652.

The unfairness and injustice of the restrictions upon compensation under the old form of law came to be recognized and so the State of Utah (Session Laws of Utah, 1919, page 158) adopted an entirely different rule; by which compensation shall be granted for an accident to a workman,

"arising out of, *or*, in the course of his employment, wheresoever such injury has occurred."

The wide difference between Utah's present law and the uniform provision theretofore existing is apparent to the careful reader. Now the accident may "arise out of" and not be "in the course of" the employment (clearly and

squarely adopting the broader construction of those words) and is compensable if it "arises out of" *or* is "in the course of" such employment "wheresoever such injury has occurred." In other words, it need not occur strictly during the working hours and it need not occur on the premises of the employer; it is sufficient if the relation of master and servant existed and if the accident logically arose out of the employment. The difference between the old and the new statute is very great. Decisions of commissions and courts generally must be carefully read with the difference in statute provisions in mind.

We do not care to discuss at length the question of whether or not the relation of master and servant existed between Mr. Parramore and the Cudahy Packing Company at the time of the accident. He had been regularly employed by that company for two years, day after day, and week after week—he was paid semi-monthly and had a regular shift. To hold that he was not an employee of the Cudahy Packing Company on that morning until the moment his shift actually started, does violence to a true sense of justice and entirely ignores the spirit and purpose of the Industrial Commission Law.

CITATIONS.

Before such statutes existed—in Common Law Negligence Cases, it was held that the employment continued beyond the working hours as illustrated in the following Illinois case:

The petitioner was employed in defendant's hotel at $14.00 per month and her board and room on the third floor. The elevator was used by both guests and employees. She had finished her work for the day and was off shift until the next morning. About 9 p. m. she went out for a walk, returned to the hotel about 11 p. m. She was injured in the elevator. The question was whether she was a passenger (guest) in the elevator or an employee of the hotel. The Supreme Court of Illinois held she was an employee.

> "The plaintiff had finished her work for the day and went out of the hotel for recreation, and was returning to her room and her duties. Her going out of the hotel for a walk was not inconsistent with the relation of master and servant existing between her and the defendant, and was in accordance with the ordinary and usual custom of house servants when not actually engaged in their duties."

> "The plaintiff was returning to her room for the purpose of resuming her work in the morning, and there was no evidence under which she could be held to be a passenger by being in the elevator."

> Walsh vs. Cullen, L. R. A. (N. S.), Vol. 18, p. 913.

The following cases illustrate the holdings of various courts and commissions upon the subject of injuries arising out of the employment.

A boy 14 years of age was injured on his way to his place of employment at the close of the lunch hour. He was passing along the usual way when he was attracted out of his course to a machine in which he was injured. The only question was whether at the time of his employment he was "performing service growing out of and incidental to his employment." The Commissions awarded compensation.

> "The award of the commission is not only in accord with the spirit and intent of the Workmen's Compensation Act, but is within the rule established by the adjudicated cases. One who is on his way to his place of employment is performing service growing out of and incidental to his employment."
>
> Stoughton v. Mathiason, etc., N. C. C. Cases, Vol. 12, p. 390.

The petitioner was employed on construction work for a contractor alongside of railroad tracks near a station house which was on the side of the tracks with the building. He had occasion to go to a toilet and in going to the station to use the toilet walked so near the tracks that he was injured by a passing engine. He was given compensation.

> "On the question whether the accident arose out of and in the course of the employment, the court reached the conclusion, under the conditions revealed by the evidence that the act of the petitioner in following the course which he took along the railroad track was such an act as could be reasonably expected of one engaged in his work at the

place in question and under the circumstances of his need at the time."

Madden vs. Whitman, N. C. C. Cases, Vol. 12, p. 556. (38 N. J. L. J. 113).

The deceased went ashore from his vessel to procure soap, tobacco and clothes for his personal needs and spent some time in a saloon. On returning, he fell from a ladder which connected the quay and the ship and was drowned.

"In these circumstances, it was not, I think, contested that the accident from which death occurred, arose out of the employment; the danger of falling from a ladder which gave the only access from the quay to the ship being in its nature incidental to the service of a seaman." Compensation granted.

Moore vs. Manchester, etc. Butterworth C. Cases, Vol. 3, p. 527.

"A tailoress was injured by her right hand being caught and crushed in the swinging door of the main entrance to a building, the fourth floor of which was occupied by the business of her employer, while she was leaving the building after the close of her day's work. Compensation was refused by defendants, each claiming that the other and not he was the employer of applicant."

"Another question arose as to whether the injury was sustained at a time when applicant was carrying a risk of the commonalty, or whether the protection of the compensation statute covered her until she had left the building and was on the public thoroughfare. The Industrial Commission held that

the accident was sustained in the course of employment."

Chaboya v. Becker, 7 Cal. Ind. Com. 690 (1915), 12 N. & C. C. C., p. 622.

The petitioner was employed by Olsen, who was an independent contractor for Dunn & Co. The two principals occupied one floor of a building to which access was afforded by a flight of stairs which were open to and used by all the tenants of the building and was not under the control of either Olsen or Dunn & Co. At noon she went out for lunch and was hurt upon these stairs.

"The first contention, that she was not in the employ of Olsen while she was going to lunch, cannot be sustained. Her employment was by the week. It would be too narrow a construction of the contract to say that it was suspended when she went out for this merely temporary purpose and was revived only upon her return to the work room."

"Nor do we regard it as decisive against the petitioner that she was injured while upon stairs of which neither Dunn & Co. nor Olsen had control, though they or their employees had a right to use them. These stairs were the only means available for going to or from the premises, where she was employed, the means which she practically was invited by Olsen and by Dunn & Co. to use.

"It was the necessary incident of the petitioners employment to use these stairs. We are of the opinion that according to the plain and natural meaning of the words, an injury that occurred to her while she was so using them arose 'out of and

in the course of' her employment." Sundine vs. Dunn, et al., (Mass.), 105 North Eastern, 433.

"The defendant's employment of the decedent therefore contemplated that he would approach and leave the plant by passing to and from the highway over private property, including either of the footbridges and the railroad tracks parallel with Main street.

"Under these circumstances, this employee was within the scope of his employment when he was passing to or from his work at the plant over the private property lying between Main street and the plant; in other words, the use of this method of approach to the plant by this employee was an incidental term of his contract of employment annexed to it by the consent of his employers."

Procaccino v. E. Horton & Sons, 111 Atl. Rep. 595.

"The death of an employee of a manufacturing company resulted from an injury arising out of his employment where he was struck and killed by an engine operated by a railroad while he was pursuing his way to work along a path crossing the tracks, where such path, although not a public highway, was not only the sole means of ingress and egress for the employees to their place of work, but was the means of access required and authorized by the manufacturing company, and intimately associated with the company's plant as a part of its necessary establishment."

Judson Mfg. Co. v. Industrial Accident Commission, 181 Cal. 300.

"On June 5, 1919, L. Behnken, the husband and father, respectively, quit his work at noon at the usual hour, went home to get his dinner, had dinner, and started back to his work where he was due at one o'clock. He started back at his usual time, and while crossing was accidentally struck and killed by a railroad train operated over the Kansas City Southern Railway Company's tracks. This train did not stop at Hartburg, and had nothing to do with the Hartburg Lumber Company.

"The very conditions and environments of his employment, calling for his continuous and frequent crossing of the railroad, established and sponsored by his employer, as they in fact had been—created a special hazard to which he was necessarily and constantly exposed in performing the service he was expected to render. The risk and danger—being peculiarly imminent as to employees, in consequence of their having so often each day to cross and recross the track—was therefore not one to which the general public was in like manner and degree subjected, but was in truth an incident of the employment itself; and, if the risk was one inherent in or incidental to the employment, the injury, which matured it naturally and necessarily 'had to do with and originated in' the business."

Lumbermen's Reciprocal Ass'n vs. Behnken etal., 226 S. W. 155, 156.

The following discussion of this question by the Supreme Court of West Virginia in 1914 under a statute reading "arising out of and in the course of the employment" shows plainly what that Court thinks of the limitations imposed by that phrase:

"If it had been shown that the decedent approaching his place of work by the only means of access thereto, was almost within the reach of it at the time of his injury, some of the authorities relied upon might justify the allowance of the claim; for the employment is not limited to the exact moment of arrival at the place of actual work, nor to the moment of retirement therefrom. It includes a reasonable amount of time before and after actual work. A reasonable time after the termination of actual work is allowed. If a workman is injured on the premises of the employer, and while leaving his place of actual work by the usual course of travel, the injury is deemed to have arisen out of the employment. Kinney v. Baltimore & O. Employees' Relief Assn., 35 W. Va. 385, 15 L. R. A. 142, 14 S. E. 8.

Since the injury after termination of actual work, while on the premises of the employer and in pursuit of the usual way of leaving the same, is held to be within the course of employment and to have arisen out of the same, it seems clear that an injury to a workman while coming to his place of work on the premises of the employer, and by the only way of access, or the one contemplated by the contract of employment, must also be regarded as having been incurred in the course of the employment and to have arisen out of the same. If, in such case, injury does not occur on the premises, but in close proximity to the place of work, and on a road or other way intended and contemplated by the contract as being the exclusive means of access to the place of work, the same principle would apply and govern. If the place at which the injury occurred is brought within the contract of employment by the requirement of its use by the employee, so that he has no discretion or choice as to his mode or manner of

coming to work, such place and its use seem logically to become elements or factors in the employment, and the injury thus arises out of the employment and is incurred in the course thereof."

Constantine vs. Commission, L. R. A. 1916, "A" —p. 330.

CONCLUSION.

The risk from which the deceased's injury was received was incident to the employment. It was not in the legal sense independent of the relation of master and servant.

The facts in this case do not bring it within the class of "street accidents" ordinarily designated as such. Although it occurred upon a street, and although the blow was received before the deceased was actually upon the premises of the defendant in error, yet it is plain that the risk was incident to the employment and that it arose out of the employment.

This is the view taken by the Industrial Commission of Utah and the view taken by the Supreme Court of Utah. It is the reasonable construction placed upon a Utah Statute by the Utah Supreme Court. Plaintiff in error cannot complain of that.

In order that this Court may fully understand what was, and what was not, determined by the Supreme Court

of Utah, we print in full the opinion of the Supreme Court of Utah, in the appendix to this Brief.

We respectfully submit that the motion of the defendants in error to dismiss the appeal in the above entitled action for the reasons stated in the motion to dismiss and affirm, should be granted, and that if that motion is not granted, then the decision of the Supreme Court of Utah should be affirmed upon the merits.

Respectfully submitted,

HARVEY H. CLUFF,
Attorney General of Utah.

WILLIAM A. HILTON,
Assistant Attorney General of Utah.
Attorneys for Defendants in Error.

J. ROBERT ROBINSON,
Assistant Attorney General,
FREDERICK C. LOOFBOUROW,
of Counsel.

APPENDIX.

IN THE SUPREME COURT OF THE STATE OF UTAH.

CUDAHY PACKING COMPANY
OF NEBRASKA, a corporation,
Plaintiff,

v.

INDUSTRIAL COMMISSION
OF UTAH, et al.,
Defendants.

GIDEON, J.

The plaintiff, Cudahy Packing Company, by writ of review seeks the annulment of an award made by the Industrial Commission in favor of the dependents of Joseph Parramore, deceased. The dependents and the Industrial Commission are made defendants.

There is no dispute about the dependency of the claimants, nor of the fact of employment or wages deceased received.

The plaintiff owns and operates a packing plant in what is known as North Salt Lake, in Davis county, about six miles north from Salt Lake City. More than forty per cent of its employees reside in Salt Lake City. Other employees reside in Bountiful, Centerville, and other villages located further north. Few, if any, of the employees have homes in the immediate vicinity of the packing plant. The plant is approximately one-half mile west of the Salt Lake-Ogden highway. This highway runs north and south. A county road runs west from and at right angles to the Salt Lake-Ogden highway and extends to and beyond the packing plant. A short distance from the highway the county road crosses at right angles the tracks of the Bamberger Electric Railroad. From that point west the county road is the only roadway leading to the packing plant.

The deceased was employed by the plaintiff as an engineer. His hours of work were from 7 a. m. to 4 p. m. On the morning of the accident, August 9, 1921, while riding to work with a fellow employee, he was struck by an engine on the Denver & Rio Grande Western Railroad track and instantly killed. The distance from the place of the accident to the entry to plaintiff's plant was about 100 feet. The Commission, among other things, found:

> "* * * that on said date three workmen, including Mr. Parramore, all of whom lived in Salt Lake City, were traveling in an automobile owned by one of the workmen, approaching the plant where they were employed; that while crossing the main line tracks of the Denver & Rio Grande Western Railroad Company, which tracks were along side the land upon which is located the plant of the Cudahy Packing Company, the automobile in which they were riding was struck by an engine of the railroad company and Joseph Parramore thrown against a post in the right of way fence, which fence also enclosed the property of the Cudahy Packing Company, and was instantly killed; that within half a mile of the plant of the Cudahy Packing Company, where Mr. Parramore was employed, it was necessary that Mr. Parramore pass over the main line tracks of the Bamberger Electric Railway Company and the main line tracks of the Oregon Short Line Railroad Company, and the main line tracks of the Denver & Rio Grande Western Railroad Company, and three side tracks and transfer tracks between these various lines of railroad; that the Cudahy Packing Company furnished its employees no method of travel or conveyance in coming to or leaving the plant and most of the employees of the com-

pany lived in such localities that it was necessary that they should travel, to and from their work, the road which crossed the railroad tracks above mentioned; that the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads, and by necessity the near proximity of the railroads is essential to the successful operation of the plant; that the death of Mr. Parramore occurred about seven minutes before the time at which he was to commence work; that the Cudahy Packing Company does not furnish at its plant either board or lodging; that there are no public conveyances that could carry employees directly to the plant; that employees who went to their work by street cars or by the Bamberger Electric Railway must cross the railroad tracks above mentioned, either on foot or by private conveyance; that Mr. Parramore at the time he was killed was using the most direct and practicable route to the plant of the Cudahy Packing Company and the one ordinarily traveled by a majority of the employees, and by all the employees residing in Salt Lake City."

The findings are supported by competent evidence found in the record. It likewise appears that practically all travel over this road is that of the employees and others going to the packing plant, or persons having business with the stockyards located just north of that plant. In certain seasons of the year sheep are herded in the western part of the county and are driven over this county road, but it is quite apparent, that the way is maintained and kept in repair for the benefit of persons traveling to and from the plaintiff's plant.

Upon substantially the foregoing facts an award was made. Plaintiff assails that award. The controlling question before the Commission, and the one before this court, is, did the accident which caused the death of Parramore arise out of or in the course of the employment? It is insisted by plaintiff that the findings are not supported by the testimony; that under the admitted facts the injury is not compensable under the Workmen's Compensation Act of this state; that the relation of employer and employee did not exist at the time of the accident. The Act provides for compensation to every employee whose employment is subject to the Act, if injured "by accident arising out of, or in the course of his employment, wheresoever such injury has occurred." Sec. 3113, Comp. Laws Utah, 1917, as amended by Ch. 63, Laws Utah, 1919.

Our Workmen's Compensation Act differs from a majority of the states in that our statute uses the disjunctive "or" while in most of the compensation laws the conjunctive "and" is found. The compensation law as originally enacted in 1917 provided compensation for injuries arising out of and in the course of the employment. The Act was amended in 1919 to read as above quoted. It is apparent, therefore, that the legislature by the amendment intended to include within the statute accidents not covered by the original act.

The courts generally agree in principle respecting the elements to be considered in determining what accidents

are included in the words "arising out of and in the course of the employment." The Supreme Judicial Court of Massachusetts, In re Employers Liability Assurance Corporation, Ltd., 102 N. E. 697, has given probably as satisfactory and comprehensive a definition of these terms as can be found in any of the cases. It is not, however, necessary or desirable in the determination of this case to attempt a definition of these terms or to differentiate between accidents arising out of or in the course of the employment. If there is liability for the injury under consideration it must be founded upon the inferrable fact that the danger incident to crossing this railroad track, by reason of its location and proximity to the packing plant, must be held to have been within the contemplation of the parties at the date of the employment. The accident would therefore both arise out of and occur in the course of employment. No other theory finds support in the decisions of the reported cases. It is admited that deceased was not on the premises of the plaintiff at the time of the accident. He was not at that time engaged in any actual work connected with his employment. The engine that ran down the automobile was in no way under the control of the plaintiff, nor was it engaged in any work for or in plaintiff's behalf. The engine was under the control of the railroad company and was running south on the main line of that road.

The Commission also found, and it is undisputed, that the plaintiff did not control nor in any way attempt to control the method or manner of travel to or from work by

any of its employees. Neither did the plaintiff furnish any means of conveyance. That was left entirely with the individual employee.

It is argued by counsel for plaintiff that the Commission's finding "that the plant of the Cudahy Packing Company is dependent upon shipping facilities furnished by the railroads and by necessity the near proximity of the railroads is essential to the successful operation of the plant," is erroneous and is not supported by the evidence. In our judgment that finding is not controlling or of much significance. It is undoubtedly true that the successful operation of a packing plant is dependent upon railroad facilities, but that dependence is common to a large percentage of all manufacturing institutions. The proximity of a railroad is a matter of convenience to industries dependent upon shipping facilities. Such facts alone cannot determine the right of claimants to compensation. As above indicated, if plaintiff is liable for the accident it must be upon some other ground than the mere fact of the convenience of having a railroad near its plant, or of its dependence upon shipping facilities.

It was customary, in fact absolutely necessary, for employees going to the plant to work to pass over and across these railroad tracks on the public road where the accident happened. No other means or way existed by which employees could get to the plant. Employees in Salt Lake City had three ways of going to their work—either by

street railway, along the highway, or over the Bamberger Electric Railroad. That election of the way of travel existed until the employees reached the county road running west from the station of the Bamberger Electric line. That point is approximately one-third mile from the packing plant. In going west from that point over the county road the employees necessarily cross the main line tracks of the Oregon Short Line, the main line track of the Denver & Rio Grande Western, and three side tracks and transfer tracks. That condition existed at the time of the employment of deceased and at the time of the accident.

Some stress is laid in the argument on the fact that the roadway over which deceased was traveling was a public highway. No reason or principle is suggested why that fact should be controlling in determining the liability for this accident. It conclusively appears, however, from the testimony that the road, while known as a county road and presumably kept in repair by the county, is there for the accommodation of the plaintiff and its employees, and it is reasonably inferrable that if the packing plant was not located there the county highway would be abandoned as such. If the Workmen's Compensation Law authorizes or permits a recovery for an injury to an employee going to or returning from work over private property under particular circumstances or surroundings, there does not seem to be any logical reason why such liability should not exist in favor of a workman going to or returning from work over a public road under like circumstances or surroundings. If the

liability exists, it is by reason of the fact that the plant or manufacturing establishment is so located that there is no other method or means of approach except over railroad tracks or other dangerous places, and that the same are in such close proximity to the plant that the employee has no election or option in determining or selecting his way of approach.

In Procaccino v. E. Horton & Sons, et al., 111 Atl. 594, the facts were similar to the facts here. In that case the deceased was employed in a manufacturing plant located immediately east of a canal. West of the canal were several railroad tracks and still farther west was a highway. The deceased had his home west of the highway. Two foot bridges were constructed over the canal from the plant to the railroad tracks. It was the custom of the deceased and other employees of the defendant manufacturing company in that case and other companies to indiscriminately use these bridges. The deceased was in the habit of going to and from his home over one of the bridges and passing over a pathway across the railroad tracks. On returning to work at the noon hour he was injured by an engine passing along one of these tracks. In discussing the right of the dependents of the deceased, the court says:

> "The defendants' employment of the decedent therefore contemplated that he would approach and leave the plant by passing to and from the highway over private property, including either of the foot-bridges and the railroad tracks parallel with Main street.

"Under these circumstances this employee was within the scope of his employment when he was passing to or from his work at the plant over the private property lying between Main street and the plant; in other words, the use of this method of approach to the plant by this employee was an incidental term of his contract of employment annexed to it by the consent of his employers. Merlino v. Connecticut Quarries Co., 93 Conn. 57, 104 Atl. 396.

"When this employee, under the facts found, entered upon the private property lying between Main street and the defendants' plant, he came within the zone of his employment, and all dangers and perils incident to the use of this method of approach were perils incident to and arising out of his employment."

In re Sundine, 105 N. E. 433, the court, in considering the right of the claimant for compensation, said:

"Nor do we regard it as decisive against the petitioner that she was injured while upon stairs of which neither Olsen nor Dunne & Co. had control, though they and their employees had the right to use them. These stairs were the only means available for going to and from the premises, where she was employed, the means which she practically was invited by Olsen and by Dunn & Co. to use. In this respect, the case resembles Moore v. Manchester Liners, supra; and that case, decided under the English act before the passage of our statute, must be regarded as of great weight. (Citing cases.)

"It was a necessary incident of the petitioner's employment to use these stairs. We are of opinion that according to the plain and natural meaning of

> the words an injury that occurred to her while she was so using them arose 'out of and in the course of' her employment."

In the second headnote in Judson Mfg. Co. et al v. Ind. Acc. Com. 181 Cal. at p. 300, which reflects the opinion of the court, it is said:

> "The death of an employee of a manufacturing company resulted from an injury arising out of his employment when he was struck and killed by an engine operated by a railroad company while he was pursuing his way to work along a path crossing the tracks, where such path, although not a public highway, was not only the sole means of ingress and egress for the employees to their place of work, but was the means of access required and authorized by the manufacturing company, and intimately associated with the company's plant as a part of its necessary establishment."

The Supreme Court of West Virginia, in De Constantin v. Pub. Service Com., 83 S. E., at p. 89, in considering a question similar to the one presented by this record, says:

> "Since injury after termination of actual work, while on the premises of the employer and in pursuit of the usual way of leaving the same, is held to be within the course of employment and to have arisen out of the same, it seems clear that an injury to a workman while coming to his place of work on the premises of the employer and by the only way of access, or the one contemplated by the contract of employment, must also be regarded as having been incurred in the course of the employment and

to have arisen out of the same. If, in such case, injury does not occur on the premises, but in close proximity to the place of work and on a road or other way intended and contemplated by the contract as being the exclusive means of access to the place of work, the same principle would apply and govern. If the place at which the injury occurred is brought within the contract of employment, by the requirement of its use by the employee, so that he has no discretion or choice as to his mode or manner of coming to work, such place and its use seem logically to become elements or factors in the employment, and the injury thus arises out of the employment and is incurred in the course thereof. But, on the contrary, if the employee, at the time of the injury, has gone beyond the premises of the employer, or has not reached them, and has chosen his own place or mode of travel, the injury does not arise out of his employment, nor is it within the scope thereof."

See also 1 Honnold on Workmen's Comp., 1368, and Lumbermen's Reciprocal Assn. v. Behnken et al., 226 S. W. 154.

Plaintiff's contention is that the deceased received the injury while on his way to work at a place not under its control, and at a time when the relation of employer and employee did not exist. It is therefore argued that the deceased was exposed to no other or greater dangers than any member of the public traveling over this road; that any accident resulting from such exposure does not entitle the injured person to compensation under the Workmen's Compensation Act, regardless of the fact of employment.

Numerous cases are cited in support of that contention, among others the following: In re Employers Liability Assurance Corp., 102 N. E. 697; Honnold, Work. Comp. 1917, Sec. 359; Nowalek et al. v. N. Y. Con. R. Co. (N. Y.) 128 N. E. 888; United D. & R. Co. v. Ind. Com., 126 N. E. 184; In re Brown, 169 N. Y. S. 1047, 15 N. C. C. A. 290; Leveroni v. Travelers Ins. Co., 107 N. E. 349; City of Milwaukee v. Althoff, 156 Wis. 68, 145 N. W. 238; Wilson v. H. C. Frick Coke Co., 110 Atl. 723.

Conceding that the weight of authority denies to an employee the right to compensation for an injury received while on his way to or from his employment, the question here, in its final analysis, is, Did the particular facts surrounding this accident make this case an exception to the holdings of the courts? The Commission was of the opinion that the facts in this case warranted the conclusion that the general rule invoked by plaintiff did not apply. It is not easy, and probably not possible or desirable, to state any general rule applicable to every condition or state of facts by or under which compensation can be allowed or denied to an employee. Courts are usually controlled in allowing or denying compensation by the peculiar facts of each case. In In re Bollman, 126 N. E. 639, the Supreme Court of Indiana says: "The question in each case must be determined from a consideration of its own facts and circumstances." That statement is approved by the same court in a later case—Empire H. & A. Ins. Co. v. Purcell, 132 N. E. 664.

Considering the findings of the Commission and the undisputed facts which appear in this record, and weighing the effect of those facts in the light of the authorities, we are of the opinion that there is sufficient competent testimony to support the Commission's findings and that the findings applied to the particular facts in this case support the award.

Since the oral argument and the submission of this case plaintiff has asked and received permission to file an amendment to its petition for writ of review. The burden of that amendment is that the compensation law contravenes both the State and Federal Constitutions—that it in effect deprives the individual of property without due process of law. It is insisted that

> "To hold that Section 3113, which provides: 'Every such employee who is killed by accident arising out of, or in the course of his employment, wheresoever such injury has occurred,' etc., means that said provision of the Statute extends so as to obligate the employer to indemnify its employees for accidents not a part of the hazard of the industry, and not occurring while actually engaged in the work of the employer, renders the Act contrary to the provisions of the Constitution of the State of Utah, to-wit:
>
> "Sec. 7 of Article I of the Constitution of the State of Utah which reads as follows:
>
> " 'No person shall be deprived of life, liberty or property without due process of law'

and contrary to the provisions of Sec. 1 of Article XIV of the Constitution of the United States providing that:

> " 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law'

for the reason that to so hold, makes said Statute come under the constitution's condemnation of all arbitrary power so prohibited both by the Constitution of the State of Utah and the Constitution of the United States as above set forth."

That the general and underlying principles of the Workmen's Compensation Law do not conflict with any constitutional right of employer or employee is not an open question in this state. (Ind. Com. v. Daly Min. Co., 172 Pac. 301; Garfield Smelting Co. v. Ind. Com., 178 Pac. 57; Ind. Com. v. Evans, 174 Pac. 825; Reteuna v. Ind. Com., 185 Pac. 535; Utah Copper Co. v. Ind. Com., 193 Pac. 24; Salt Lake City v. Ind. Com., 199 Pac. 152.) The contention here, however, seems to be that that part of Sec. 3113, supra, which authorizes compensation for an injury "wheresoever such injury has occurred" is an attempt to charge an industry for something not a part of the hazard of such industry. Of necessity, that phrase should be construed in connection with and as a part of the entire section. When so construed it follows that the accident, wheresoever it has occurred, must also arise out of or be in the course of the employment. So interpreted we fail to see any in-

fringement of plaintiff's constitutional rights.

We are referred to the opinion of the Supreme Court in Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, as supporting plaintiff's contention. It does not appear in the record before this court that the Commission or any member of it visited the place of the accident. On the contrary it is affirmatively stated in plaintiff's brief that the Commission did not visit the place of the accident. Presumably therefore nothing was considered by the Commission except testimony taken at a regular hearing. We are, however, of the opinion and so hold that it affirmatively appears from the testimony found in this record that the Commission's findings are supported by such testimony. The opinion of the Supreme Court in the above case is therefore not applicable or controlling in this case.

The award is affirmed with costs.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922.

No. [redacted]107

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,

Plaintiff in Error,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,

Defendants in Error.

ERROR TO SUPREME COURT OF STATE OF UTAH.

BRIEF OF PLAINTIFF IN ERROR, IN OPPOSITION TO MOTION OF DEFENDANTS IN ERROR TO DISMISS AND AFFIRM.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for The Cudahy Packing Company of Nebraska, Plaintiff in Error.

DUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922.

No. 547

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,

Plaintiff in Error,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,

Defendants in Error.

ERROR TO SUPREME COURT OF STATE OF UTAH.

BRIEF OF PLAINTIFF IN ERROR, IN OPPOSITION TO MOTION OF DEFENDANTS IN ERROR TO DISMISS AND AFFIRM.

(Italics ours.)

STATEMENT OF CASE.*

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

On page 6 of brief of defendants in error appears the statement that the ruling of the Supreme Court of Utah

*This case is before this court on writ of error and also on application for certiorari.

(herein referred to as "State Court") on the Utah statute, on the question as to "Whether or not the employer can be made to compensate the employe for an injury, the result of an accident not a part of the hazard of the industry," was favorable to plaintiff in error. This is entirely incorrect. The court construed and applied the Utah statute in this case so as to make plaintiff in error liable for an injury not resulting from a hazard of the industry, and bearing no causal relation thereto, thereby depriving plaintiff in error of its constitutional rights.

An examination of the record will show that the uncontradicted facts are that the plaintiff in error, The Cudahy Packing Company of Nebraska, a corporation (sometimes referred to herein as "Cudahy Company"), owns and operates a packing plant at North Salt Lake, Utah, and that on August 9, 1921,

Joseph Parramore,	A stationary engineer, working by the day (Rec., 30, 38),†
on his way to work,	before his employment had begun (Rec., 26, 32, 42, 43),
while riding in a friend's automobile,	Cudahy Company having no interest in it and in no way furnishing it (Rec., 24, 31, 35, 54, 55, 70, 72),
on a public highway,	used by many persons other than the employees of Cudahy Company, and not on its premises (Rec., 26, 27, 39-43).
was struck at a railroad crossing,	on the main line, and not a part of the switching facilities of the plant (Rec., 23, 24, 54, 70, 72)
by a railroad engine,	not owned or operated by, or in the service of Cudahy Company (Rec., 24, 43, 44, 54),

†The designation "Rec" refers to pages of printed record.

and killed, at a point on the county road about 100 feet from the entry to Cudahy Company's plant (Rec., 36, 37).

The employment of deceased was within certain hours and within the plant. Outside of the plant and outside of those hours he had no duties.

Section 3113 of the Utah Workmen's Compensation Act, as amended, provides compensation for "Every such employee who is killed by accident arising out of, *or* in the course of, his employment, wheresoever such injury has occurred," etc.

Mary Ann Parramore, as the widow of Joseph Parramore, and as guardian of their three children, was awarded compensation under this act by The Industrial Commission of Utah (herein referred to as "Commission"). The Supreme Court of Utah (a court of last resort) affirmed the award. (207 Pac. 148.)

In the State Court there was drawn in question by plaintiff in error

(a) The validity, under the Fourteenth Amendment, of the Utah statute as construed and applied.

(b) The validity, irrespective of the statute, of the action of the Commission (it being contended that it acted arbitrarily and without jurisdiction) in depriving plaintiff in error (as it did) of rights, privileges and immunities claimed under the Fourteenth Amendment.

These federal questions were in the State Court:

(a) Specially claimed,

(b) Properly set up,

(c) Necessary to a determination of the case,

(d) Specifically considered,

(e) Actually passed upon,

(f) Ruled adversely to plaintiff in error,

and have been duly reserved by the assignments of error herein. (Rec., 66-68, 76-77, 88-90.)

POINTS AND AUTHORITIES.

THE QUESTIONS HERE INVOLVED ARE FEDERAL QUESTIONS.

I.

The question whether or not the Utah statute as construed and applied is repugnant to the Constitution of the United States is one which this court must consider upon writ of error.

Section 237 Jud. Code, as Amended, Act Dec. 23, 1914, C. 2, Act Sept. 6, 1916, C. 448, Sec. 2, and Act Feb. 17, 1922, C—, 42 Stat.

Dahnke-Walker Milling Co. v. *Bondurant,* 42 Sup. Ct. Rep. 106, 107, 108; 66 L. Ed. 114, 115, 116.

Merchants Nat'l Bank v. *Richmond,* 256 U. S. 635, 637.

II.

The validity of the Utah statute is involved in this case. A statute may be valid as applied to one set of facts and invalid as applied to another.

Dahnke-Walker Milling Co. v. *Bondurant,* 42 Sup. Ct. Rep. 106, 108; 66 L. Ed. 114, 116.

III.

The facts being undisputed, the question whether under the federal constitution the Utah statute as construed and applied, and the question whether the action

of the state court in affirming the award, deprives plaintiff in error of its rights under the Fourteenth Amendment, are

(a) Federal questions, and

(b) Questions of law.

Truax v. *Corrigan,* 66 L. Ed. 132, 134, 135; 42 Sup. Ct. Rep. 147.

Dahnke-Walker Milling Co. v. *Bondurant, supra.*

Merchants Nat'l Bank v. *Richmond,* 256 U. S. 635, 641.

Jones Nat'l Bank v. *Yates,* 240 U. S. 541, 552, 553.

Int. Comm. Com. v. *Louisville & Nashville R. R. Co.,* 227 U. S. 88, 91, 92.

The contention that there is no evidence to support the action of the state court raises a purely legal question. (See authorities, *supra,* this Point III and Point V.) A finding upon undisputed facts is a finding of law, even though it may be styled a finding of fact. These rules are of familiar application in compensation cases.

Bates & Rogers Cons. Co. v. *Allen,* 183 Ky. 815; 210 S. W. 467, 471.

Hochspeier v. *Ind. Bd.* 278 Ill. 523; 116 N. E. 121; L. R. A. (1918 F) 227.

Glatzl v. *Stump* (N. Y.), 114 N. E. 1053, 1054.

In re Fisher, 220 Mass. 581; 108 N. E. 361.

IV.

In determining the legal effect of facts in evidence as a deprivation of plaintiff in error's rights under the Fourteenth Amendment, this court is

"at as full liberty to consider them as was the State

Supreme Court. * * * This court must analyze the facts and draw its own inferences as to their ultimate effect and is not bound by the conclusions of the State Supreme Court in this regard."

Truax v. *Corrigan,* 66 L. Ed. 132, 134, 135; 42 Sup. Ct. 127.

V.

If a federal right has been denied as the result of a finding of fact which is without support in the evidence, this court may examine the evidence to the extent necessary to give the plaintiff in error the benefit of the federal right asserted.

Truax v. *Corrigan,* 66 L. Ed. 132, 134, 135; 42 Sup. Ct. 127.

Jones Nat'l Bank v. *Yates,* 240 U. S. 541, 552, 553.

Southern Pac. Co. v. *Schuyler,* 227 U. S. 601, 611.

North Carolina R. R. Co. v. *Zachary,* 232 U. S. 248, 258, 259.

Carlson v. *Curtiss,* 234 U. S. 103, 106.

Kansas City So. Ry. Co. v. *Albers Com. Co.* 223 U. S. 573, 591, 592.

Creswill v. *Knights of Pythias,* 225 U. S. 246, 261.

Merchants Nat'l Bank v. *Richmond,* 256 U. S. 635, 638.

VI.

The question whether or not (irrespective of the statute) the action of the state court in affirming the award is repugnant to the Fourteenth Amendment is a federal question and one which this court may review on writ of error.

Prudential Insurance Company of America v. *Cheek* (1922), 42 Sup. Ct. Rep. 518, 523, 524; 66 L. Ed. 626, 634, 635.

C. B. & Q. R. R. Co. v. *Chicago,* 166 U. S. 226, 241.

Scott v. *McNeal,* 154 U. S. 34, 45.

Schofield, Constitutional Law & Equity (1921), 5-37.

Twining v. *New Jersey,* 211 U. S. 78.

Ex Parte Virginia, 100 U. S. 339, 346, 347.

BRIEF OF ARGUMENT.

ERRORS RELIED ON.

Plaintiff in error here contends (as more fully appears from the assignments of error (Rec., 88-90) that the decision of the state court in affirming the award of the Commission deprives it of its property without due process of law, and denies to it the equal protection of the laws contrary to Section I of the Fourteenth Amendment of the Constitution of the United States, in that

1. Section 3113 of the Utah Statute, as construed and applied in this cause, is arbitrary, oppressive and unreasonable in that it authorizes the award of compensation for death resulting from an accident not attributable to the employment of deceased and not in any way connected therewith.
2. Whether or not the said Act (or said Section 3113 thereof) is constitutional and valid, the action of the state court was arbitrary, unreasonable, unjust and oppressive, unsupported by evidence, and in disregard of established law.
3. The Commission was wholly without jurisdiction because the accident was not an industrial accident and did not result from any hazard of petitioner's business and was in no way connected with the employment of the deceased.

REVIEWABILITY ON WRIT OF ERROR.

Section 237 of the Judicial Code (*supra*), provides that a review may be had on writ of error in this court in

> "any suit * * * where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity."

The quoted language of the statute was construed in the case of *Dahnke-Walker Milling Co.* v. *Bondurant*, 42 Sup. Ct. Rep. 106, 107, 108; 66 L. Ed. 114, 115, 116. In that case the plaintiff in error (as in the instant case) claimed a right or immunity under the Constitution of the United States and also insisted that as to the transaction in question a state statute was void. This court said (42 Sup. Ct. 107-108):

> "The court did not accede to the insistence, but applied and enforced the statute. Of course that was an affirmation of its validity when so applied. (Citing numerous authorities.) * * * The case is therefore of the class described in the first of the provisions which we have quoted from the jurisdictional section. That the statute was not claimed to be invalid in toto and for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another. (Citing authorities.) * * * Besides, a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage. (Citing authorities.) * * * Neither does it matter on what ground the court upheld and enforced the statute. The provisions quoted from the jurisdictional section show that in cases where the validity of a state statute is drawn in question because of the alleged repugnance to the constitution, the mode of review depends on the way in which the state court resolves the question. If it be resolved in favor of the validity of the statute, the review may be on writ of error; and if it be resolved against the validity the review can only be on writ of certiorari. The provisions take no account of the particular grounds or reasons on which the decision is put."

It is further contended that (irrespective of the validity of the Utah statute) the action of the state court was in itself so arbitrary and baseless and so wholly unsupported by evidence as to deny to plaintiff in error rights guaranteed to it under the Fourteenth Amendment. Such

a question may be considered by this court on writ of error.

In *Prudential Insurance Company of America* v. *Cheek*, 42 Sup. Ct. Rep. 516, at page 523, this court said:

> "It is assigned for error, *aside from the statute*, that the decision of the Missouri court sustaining the cause of action under the second count amounts to depriving plaintiff in error of property without due process of law. This point was set up properly in the state courts as a special claim of immunity under the Fourteenth Amendment; and although, under Section 237, Judicial Code, as amended by the Act of September 6, 1916, c. 448, 39 Stat. 726 (Comp. St. Sec. 1214), it could not have been made the basis of a writ of error from this court, but only a writ of certiorari, we think that, by the fair intendment of the act, since the record has been brought here properly under a writ of error because involving the constitutionality of a statute, plaintiff in error is at liberty to assign any other ground of error therein, based upon an adverse decision by the state court of last resort upon any right, title, privilege, or immunity especially set up or claimed under the Constitution or laws of the United States."

Counsel for defendants in error (Brief, p. 5) state that:

> "It appears that the Utah court based its final decision squarely upon two issues; the first a construction of a state statute, the second, an analysis of the evidence in the record."

As previously pointed out, plaintiff in error contends, here, as in the state court, that the Utah statute as construed and applied is repugnant to the Fourteenth Amendment, and also that the action of the state court in affirming the award is unwarranted and unauthorized because there was no evidence to support it. It has been said by this court in *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 91, that:

> "A finding without evidence is arbitrary and

baseless * * * and comes under the Constitution's condemnation of all arbitrary exercise of power."

Thus it appears that the plaintiff in error here attacks the decision of the state court on the precise points on which defendants in error contend that that decision was based.

We do not deem it necessary upon this preliminary motion to discuss the merits of the case.

It is vital that this court should at this time determine whether or not, under the Federal Constitution, state courts or state legislature may compel employers to provide compensation for all injuries to employees wherever, whenever and however they may occur. May an employer under the Constitution be compelled to become the general insurer of the lives and safety of his employees? Plaintiff in error contends that it may not be so compelled. This case involves that question.

The record discloses a real and substantial controversy between the parties, unaffected by any change in conditions. Counsel's suggestion that the questions involved have become moot is of itself frivolous.

The motion to dismiss and affirm should be overruled.

Respectfully submitted,

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for The Cudahy Packing Company of Nebraska, Plaintiff in Error.

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No. 107

In the Supreme Court of the United States

October Term 1921

THE CUDAHY PACKING COMPANY OF NEBASKA, a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH.

MOTION TO DISMISS AND AFFIRM

and

NOTICE OF MOTION to DISMISS AND AFFIRM

HARVEY H. CLUFF,
Attorney General of Utah.
WILLIAM A. HILTON
Assistant Attorney General of Utah
Attorneys for Defendant in Error
J. ROBERT ROBINSON
FREDERICK C. LOOFBOUROW
of Counsel.

In the Supreme Court of the United States

October Term 1921

THE CUDAHY PACKING COMPANY OF NEBASKA, a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH.

MOTION TO DISMISS AND AFFIRM

Comes now the appellee by this counsel appearing in that behalf and move the court to dismiss the appeal in the above entitled cause for want of jurisdiction because the judgment from which the said appeal purports to have been taken is the judgment of the Supreme Court of one of the United States, to-wit, the Supreme Court of the State of Utah.

And the said appellee, by counsel as aforesaid, also moves the court to affirm the said judgment from which said appeal purports to have been taken because altho the record in said cause may show that this court has

jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only.

This motion is based upon the following reasons, to-wit.

1. That no federal question is involved in this case.

2. That no federal question was necessary to the determination of this case in the Supreme Court in the State of Utah.

3. That the decision of this case by the Supreme Court of the State of Utah rests upon independent grounds not involving any federal questions.

4. That the only question involved in this case is the construction of a statute of the State of Utah and its application to the fact disclosed by the evidence in the record and those questions have been decided by the Supreme Court of the State of Utah.

5. That the validity of a statute of the State of Utah is not involved in this case.

HARVEY H. CLUFF,
Attorney General of Utah.
WILLIAM A. HILTON
Assistant Attorney General of Utah

Attorneys for Defendant in Error

J. ROBERT ROBINSON

FREDERICK C. LOOFBOUROW
of Counsel.

Received copy of the foregoing Motion to Dismiss and Affirm at Salt Lake City, Utah, this the 2nd day of September, A. D. 1922.

R. B. WEBSTER by B. L. RICH
Attorneys for Cudahy Packing Company of Nebraska, Plaintiff in Error.

In the Supreme Court of the United States

October Term 1921

THE CUDAHY PACKING COMPANY OF NEBASKA, a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH.

NOTICE OF MOTION to DISMISS AND AFFIRM

You are hereby notified that the Motion to dismiss the appeal and affirm the judgment of the Supreme Court in the above entitled case will be brought on for hearing in the above entitled Court on Monday, the 16th day of October, A. D. 1922.

HARVEY H. CLUFF,
Attorney General of Utah.

WILLIAM A. HILTON
Assistant Attorney General of Utah

Attorneys for Defendant in Error

J. ROBERT ROBINSON

FREDERICK C. LOOFBOUROW
of Counsel.

Receive copy of the foregoing Notice this the 2nd day of September, A. D. 1922.

R. B. WEBSTER by B. L. RICH
Attorneys for Cudahy Packing Company of Nebraska, Plaintiff in Error.

END

OF

CASE

CUDAHY PACKING COMPANY OF NEBRASKA *v.* PARRAMORE, AS WIDOW AND GUARDIAN, ETC., ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

No. 107. Argued November 14, 1923.—Decided December 10, 1923.

1. Agreeably to the principles sustaining state workmen's compensation laws as consistent with the Fourteenth Amendment, an employer may be required to compensate his employee for an injury of which his employment is a substantially contributory cause, though not the sole or proximate one. P. 422.
2. Whether an accident is so related to the employment that exaction of compensation may escape condemnation as clearly arbitrary and unreasonable, must depend upon the particular circumstances of the case. P. 424.
3. An employee, going to work at his employer's factory by the customary and only practicable way, was killed by a locomotive while crossing, on a public road, a railroad adjacent to the plant, a few minutes before the time when his day's service as a stationary engineer was to begin. *Held*, that imposition of liability on the employer for the benefit of the workman's dependents by a state compensation law, was constitutional. P. 426.

60 Utah, 161, affirmed.

ERROR to a judgment of the Supreme Court of Utah affirming an award of workmen's compensation by the Utah Industrial Commission.

Mr. George T. Buckingham, with whom *Mr. Thomas Creigh*, *Mr. R. B. Webster* and *Mr. Stephen E. Hurley* were on the brief, for plaintiff in error.

There was no employment of deceased by plaintiff in error at the time of the accident. Death did not result from an industrial accident. *In re McNicol*, 215 Mass. 497; 28 R. C. L. pp. 804, 805; *Bamberger Electric Ry. Co.* v. *Industrial Comm.*, 59 Utah, 257; *Kowalck* v. *New York Consol. Ry. Co.*, 229 N. Y. 489; *Re De Voe*, 218 N. Y. 318; *Tallon* v. *Interborough Rapid Transit Co.*, 232 N. Y. 410;

Clapp's Parking Station v. *Industrial Accident Comm.*, 51 Cal. App. 624; *Orsinie* v. *Torrance*, 96 Conn. 352.

The question to be determined is whether or not the statute as construed and applied is valid. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Merchants' National Bank* v. *Richmond*, 256 U. S. 635.

The contention that there is no evidence to support the action of the state court raises a purely legal question. *Truax* v. *Corrigan*, 257 U. S. 312; *Merchants' National Bank* v. *Richmond*, *supra*; *Jones National Bank* v. *Yates*, 240 U. S. 541.

A finding upon undisputed facts is a finding of law, even though it may be styled a finding of fact. *Bates & Rogers Co.* v. *Allen*, 183 Ky. 815; *Hochspeier* v. *Industrial Board*, 278 Ill. 523; *Glatzl* v. *Stumpp*, 220 N. Y. 71; *In re Fisher*, 220 Mass. 581.

A finding without evidence (as in this case) is beyond the jurisdiction of the Commission. It comes "under the Constitution's condemnation of all arbitrary exercise of power." *Interstate Commerce Comm.* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88; *Bamberger Electric Ry. Co.* v. *Industrial Comm.*, 59 Utah, 257; *Clapp's Parking Station* v. *Industrial Accident Comm.*, 51 Cal. App. 624.

In determining the legal effect of facts in evidence as a deprivation of plaintiff in error's rights under the Fourteenth Amendment, "This Court must analyze the facts as averred and draw its own inferences as to their ultimate effect and is not bound by the conclusions of the State Supreme Court in this regard." *Truax* v. *Corrigan*, 257 U. S. 312.

Since the Commission was without jurisdiction, its award deprived plaintiff in error of its property without due process of law. *Scott* v. *McNeal*, 154 U. S. 34; *Interstate Commerce Comm.* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88.

The restraints of the Fourteenth Amendment bind equally judges, legislatures, executive officers. *Myles Salt*

Co. v. *Iberia Drainage District*, 239 U. S. 478; *Scott* v. *McNeal*, 154 U. S. 34; *Chicago, B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226; *Twining* v. *New Jersey*, 211 U. S. 78; *Ex parte Virginia*, 100 U. S. 339; Schofield, Const. Law and Equity (1921) pp. 5, 9, 21.

A judgment of a state court which deprives a person of property without due process amounts to a denial of a right secured by the Fourteenth Amendment "even if it be authorized by statute." *Myles Salt Co.* v. *Iberia Drainage District*, 239 U. S. 478; *Chicago, B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226; *Scott* v. *McNeal*, 154 U. S. 34; Schofield, Const. Law and Equity, (1921), pp. 5–37.

Irrespective of the validity of the statute, the action of the Utah court was arbitrary, oppressive and unreasonable, and contrary to law, and therefore it violates the Fourteenth Amendment. *Myles Salt Co.* v. *Iberia Drainage District*, 239 U. S. 478; *Chicago, B. & Q. R. R. Co. Chicago*, 166 U. S. 226; *Scott* v. *McNeal*, 154 U. S. 34; *Prudential Insurance Co.* v. *Cheek*, 259 U. S. 530; Schofield, Const. Law and Equity (1921), pp. 5–37; *Twining* v. *New Jersey*, 211 U. S. 78; *Ex parte Virginia*, 100 U. S. 339.

This Court has uniformly upheld the constitutionality of Workmen's Compensation Acts, but solely on the principle that death or injury must be a part of the hazard of the industry. The Utah act as construed and applied extends far beyond this principle. *Arizona Employers' Liability Cases*, 250 U. S. 400; *Middleton* v. *Texas Power & Light Co.*, 249 U. S. 152; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Hawkins* v. *Bleakly*, 243 U. S. 210; *New York Central R. R. Co.* v. *White*, 243 U. S. 188.

Mr. J. Robert Robinson, Assistant Attorney General of the State of Utah, with whom *Mr. Harvey H. Cluff*, Attorney General, *Mr. William A. Hilton*, Assistant Attorney

General, and *Mr. Frederick C. Loofbourow* were on the brief, for defendants in error.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This case arises under the provisions of the Utah Workmen's Compensation Act, which provides for the payment of compensation for personal injury or death of an employee by accident "arising out of or in the course of his employment." Compiled Laws, Utah, 1917, § 3113, and amendment, Laws, Utah, 1919, c. 63.

The Cudahy Packing Company, on August 9, 1921, and prior thereto, owned and operated a meat packing plant at a point about six miles north of Salt Lake City. Its employees generally resided in that city and in villages located north and south of the plant, only a few living in the immediate vicinity thereof.

In going to and from the plant the workmen proceeded along a main highway running north and south and passing the plant at a distance of about half a mile to the east. From this point a public road runs west to and beyond the plant, crossed, before reaching the plant, by three lines of railroad, one of which, the Rio Grande Western, lies immediately adjacent to, and from which switches lead directly into, the plant. The only practicable way of ingress and egress for employees was along this road and across these railroad tracks, and that was the way customarily used. Joseph Parramore was, and for a considerable time had been, employed at the plant at a weekly salary as a stationary engineer. He lived at Salt Lake City. On the morning of August 9, 1921, he rode to the plant in the automobile of another employee, for the purpose of going to work. The automobile crossed over two of the railroad tracks and when upon that of the Rio Grande was struck by an engine and Parramore was instantly killed. This happened about seven minutes before the time when his

service as an engineer was to begin. Upon these facts the Utah Industrial Commission awarded compensation to Parramore's dependents. The Supreme Court of the State, upon a review, affirmed the award and held that the accident was one within the terms of the statute. 60 Utah, 161.

By this construction and application of the statute we are bound and the case must be considered as though the statute had, in specific terms, provided for liability upon the precise facts hereinbefore recited. *Ward & Gow* v. *Krinsky*, 259 U. S. 503, 510. The question saved in the state court and presented here is whether the statute, as thus construed and applied, is valid under the provisions of the Fourteenth Amendment.

Defendants in error have submitted a motion to dismiss the writ of error on the ground that no federal question is involved, but it is clearly without substance, and is overruled.

That the statute is constitutional upon its face is established by previous decisions of this Court (*New York Central R. R. Co.* v. *White*, 243 U. S. 188; *Hawkins* v. *Bleakly*, *Id.* 210; *Mountain Timber Co.* v. *Washington*, *Id.* 219; *Arizona Employers' Liability Cases*, 250 U. S. 400; *Madera Co.* v. *Industrial Accident Commission*, 262 U. S. 499) and the only inquiry we need make is whether it is constitutional as applied and enforced in respect of the facts of the instant case. See *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 288-289. It is settled by the decisions of this Court and by an overwhelming array of state decisions, that such statutes are not open to constitutional objection because they abrogate common law defenses or impose liability without fault. But the contention here, shortly stated, is that the accident was one which occurred off the premises of the employer on a public road, outside the hours of employment and while the employee was not engaged in any business of the em-

ployer; that it was not the result of any industrial risk but arose from a common peril to which the public generally was exposed; and that consequently liability is imposed arbitrarily and capriciously. It may be assumed that where an accident is in no manner related to the employment, an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the Constitution; but where the accident has any such relation we should be cautious about declaring a state statute creating liability against the employer invalid upon that ground. The modern development and growth of industry, with the consequent changes in the relations of employer and employee, have been so profound in character and degree as to take away, in large measure, the applicability of the doctrines upon which rest the common law liability of the master for personal injuries to a servant, leaving of necessity a field of debatable ground where a good deal must be conceded in favor of forms of legislation, calculated to establish new bases of liability more in harmony with these changed conditions. Workmen's Compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital—the one for the sake of the wages and the other for the sake of the profits. The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured. And this is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say that it is enough if there be a causal connection between the injury and the business in which he employs the latter—a connection substan-

tially contributory though it need not be the sole or proximate cause. Legislation which imposes liability for an injury thus related to the employment, among other justifying circumstances, has a tendency to promote a more equitable distribution of the economic burdens in cases of personal injury or death resulting from accidents in the course of industrial employment, and is a matter of sufficient public concern (*Mountain Timber Co.* v. *Washington, supra*, p. 239) to escape condemnation as arbitrary, capricious or clearly unreasonable. Whether a given accident is so related or incident to the business must depend upon its own particular circumstances. No exact formula can be laid down which will automatically solve every case. The fact that the accident happens upon a public road or at a railroad crossing and that the danger is one to which the general public is likewise exposed is not conclusive against the existence of such causal relationship, if the danger be one to which the employee, by reason of and in connection with his employment, is subjected peculiarly or to an abnormal degree.

Upon this question of causal relationship, the English decisions are instructive. In *Pierce* v. *Provident Clothing and Supply Co., Limited*, [1911], 1 K. B. 997, where a collector of the company, while riding a bicycle in the course of his employment, with the acquiescence of the company, was knocked down and killed by a tramcar, the employer was held liable because, by reason of his duties, the employee was more exposed to the risks of the streets than ordinary members of the public. In the opinion by Buckley, L. J., it is said (p. 1003): "An accident arises out of the employment where it results from a risk incidental to the employment, as distinguished from a risk common to all mankind, although the risk incidental to the employment may include a risk common to all mankind." See also *Martin* v. *J. Lovibond & Sons, Limited*, [1914], 2 K. B. 227. So where a workman was employed in a

place and under circumstances exposing him to more than ordinary risk of injury by lightning, such an injury was held to be one arising out of the employment. *Andrew* v. *Failsworth Industrial Society, Limited*, [1904], 2 K. B. 32.

In *Anderson & Co., Limited*, v. *Adamson*, 50 Scottish Law Reporter, 855, where a workman engaged during a violent gale in erecting a structure was injured by a slate blown from the roof of an adjoining building, a risk that all persons were more or less exposed to, it was held that as the workman was obliged to work in a stooping position and therefore could not see the slate coming, he was exposed beyond the normal risk, and could recover. The court said: "If it is the normal risk merely which causes the accident, the answer must be that the accident did not arise out of the employment. But if the position which the workman must necessarily occupy in connection with his work results in excessive exposure to the common risk (cf. *Ismay's* case, [1908] A. C. 437; *Rodger*, 1912 S. C. 584), or if the continuity or exceptional amount of exposure aggravates the common risk (cf. *M'Neice*, 1911 S. C. 12; *Warner* [1912] A. C. 35), then it is open to conclude that the accident did not arise out of the common risk but out of the employment."

The same doctrine has been declared, under the American statutes, by many of the state courts. See, for example: *Procaccino* v. *E. Horton & Sons*, 95 Conn. 408; *Empire Health & Accident Ins. Co.* v. *Purcell*, 76 Ind. App. 551; *Judson Manufacturing Co.* v. *Industrial Accident Commission*, 181 Cal. 300; *In re Bollman*, 73 Ind. App. 46; *Lumbermen's Reciprocal Ass'n* v. *Behnken*, (Tex.) 226 S. W. 154, [aff'd 112 Tex. 103]; *De Constantin* v. *Public Service Commission*, 75 W. Va. 32. The basis of these decisions is that under the special facts of each case the employment itself involved peculiar and abnormal exposure to a common peril, which was annexed as a risk incident to the employment.

Here the location of the plant was at a place so situated as to make the customary and only practicable way of immediate ingress and egress one of hazard. Parramore could not, at the point of the accident, select his way. He had no other choice than to go over the railway tracks in order to get to his work; and he was in effect invited by his employer to do so. And this he was obliged to do regularly and continuously as a necessary concomitant of his employment, resulting in a degree of exposure to the common risk beyond that to which the general public was subjected. The railroad over which the way extended was not only immediately adjacent to the plant but, by means of switches, was connected with it and in principle it was as though upon the actual premises of the employer.

We attach no importance to the fact that the accident happened a few minutes before the time Parramore was to begin work and was, therefore, to that extent, outside the specified hours of employment. The employment contemplated his entry upon and departure from the premises as much as it contemplated his working there, and must include a reasonable interval of time for that purpose. See *Gane* v. *Norton Hill Colliery Co.*, [1909] 2 K. B. 539, 544; *DeConstantin* v. *Public Service Commission*, *supra*.

In view of the facts and circumstances peculiar to this case it was fairly open to the State Supreme Court to conclude that the necessary causal relation between the employment and the accident sufficiently appeared to save it from the constitutional objection; and its judgment is accordingly.

Affirmed.

MR. JUSTICE MCKENNA, MR. JUSTICE MCREYNOLDS and MR. JUSTICE BUTLER dissent.